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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

48 CFR Parts 1602 and 1609

RIN 3206-AO43

Postal Service Reform Act; Establishment of the Postal Service Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Interim final rule; request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim final rule with comment period to establish and administer the Postal Service Health Benefits (PSHB) Program pursuant to the Postal Service Reform Act of 2022 (PSRA). Under the statute, OPM must establish a PSHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members, and not later than one year after the date of enactment, the OPM Director must issue regulations to carry out the statute.

DATES: *Effective date:* This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: OPM must receive comments on the rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) and title, by the following method:

- Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for

public viewing at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Louise Dyer Yinug, Senior Policy Analyst, at (202) 972-0913 and Rina Shah, Senior Policy Analyst, at (202) 631-4910.

SUPPLEMENTARY INFORMATION:

Executive Summary

This interim final rule establishes the Postal Service Health Benefits (PSHB) Program within the Federal Employees Health Benefits (FEHB) Program as required by the Postal Service Reform Act of 2022 (PSRA), Pub. L. 117-108. The PSHB Program will include health benefits plans available only to United States Postal Service (Postal Service or USPS) employees, Postal Service annuitants, and their eligible family members starting January 1, 2025. For these individuals, eligibility for enrollment or coverage in FEHB plans based on Postal Service employment will end on December 31, 2024, and they will be able to enroll in or be covered only by PSHB plans after that time. Subject to limited exceptions, Postal Service annuitants who retire and become Medicare-eligible after December 31, 2024, and their Medicare-eligible family members will be required to enroll in Medicare Part B as a condition of eligibility to enroll in the PSHB Program.

With the enactment of the PSRA and these implementing regulations, the Office of Personnel Management (OPM) may now contract with carriers to offer two categories of health benefits plans through the broad umbrella of the FEHB Program, established under 5 U.S.C. 8901 *et seq.* First, pursuant to 5 U.S.C. 8902, OPM may contract with carriers to offer FEHB plans. Second, pursuant to 5 U.S.C. 8903c, OPM may now contract with carriers to offer PSHB plans through the PSHB Program within the FEHB Program. The broad umbrella of the FEHB Program comprises both FEHB plans and PSHB plans.

Background

Section 101 of the PSRA adds new section 8903c to chapter 89 of title 5, United States Code, and directs OPM to establish the PSHB Program within the FEHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members. OPM will administer the PSHB Program in accordance with chapter 89 of title 5, United States Code, and implementing regulations (5 CFR parts 890 and 892 and 48 CFR chapter 16), including these amended regulations. Under 5 U.S.C. 8903c(c)(3), except as otherwise set forth in 5 U.S.C. 8903c, the provisions of chapter 89 “applicable to health benefits plans offered by carriers under section 8903 or 8903a shall apply to plans offered under the “[PSHB] Program.”

The PSHB Program was authorized under the Title I Postal Service Financial Reforms provisions in the PSRA in furtherance of Congress’s objective to “improve the financial position of the Postal Service while increasing transparency and accountability of the Postal Service’s operations, finances, and performance.”¹ OPM is issuing this interim final rule to set forth standards to implement section 101 of the PSRA to establish the PSHB Program. The first Open Season for the PSHB Program will begin on November 11, 2024, and run through December 9, 2024, and the first contract year will begin January 2025.

Section 102 of the PSRA (“The USPS Fairness Act”) amends 5 U.S.C. 8909a which was established in the Postal Accountability and Enhancement Act of 2006 (Pub. L. 109-435) and which required the Postal Service to pre-fund health benefits costs for its retirees. Section 102 of the PSRA repeals the requirement to pay actuarially determined normal cost and amortization payments into the Postal Service Retiree Health Benefits Fund (PSRHBF) established at 5 U.S.C. 8909a, and cancels any unpaid amounts previously required to be paid under section 8909a. Section 102(b) requires OPM to calculate an amount that the Postal Service will pay annually into the PSRHBF using a formula set forth at 8909a(d)(1). This amount will be calculated by June 30 of each year beginning in 2026.

¹ H. Rept. 117-89- POSTAL SERVICE REFORM ACT OF 2021, H.Rept.117-89, 117th Cong. (2023), <https://www.congress.gov/congressional-report/117th-congress/house-report/89/1>.

A. Legislative Requirements for Establishing the PSHB Program

Section 101 of Title I of the PSRA directs OPM to “establish the Postal Service Health Benefits Program within the Federal Employees Health Benefits Program” under chapter 89 of title 5 of the United States Code. The PSRA specifies that “[e]xcept as otherwise provided...any [PSHB] contract ... shall be consistent with the requirements of this chapter for contracts under section 8902 with carriers to offer health benefits plans.” Therefore, generally, the requirements of the FEHB Program will apply to the PSHB Program, unless otherwise set forth in the PSRA or in 5 CFR part 890.

B. PSHB Program Background Information

The PSRA establishes the PSHB Program within the FEHB Program. The FEHB Program was established in 1960 and provides a choice of health plans, including fee-for-service plans and health maintenance organizations, to approximately 8.2 million covered individuals including employees of the Federal Government, Federal retirees (referred to as annuitants due to their eligibility for an annuity), members of their families, former spouses, and other groups statutorily eligible as enumerated in 5 U.S.C. 8901 or set forth in other authorizing legislation. Currently, Postal Service employees, Postal Service annuitants, and their family members are also eligible for FEHB pursuant to 39 U.S.C. 1005.

FEHB plans cover a wide range of health services including routine physical exams, primary and specialist doctor’s visits, inpatient hospital care, surgery, laboratory and diagnostic tests, prescription drugs, and mental health services. Required benefits are listed in broad categories in the FEHB statute at 5 U.S.C. 8904 and include hospital benefits, surgical benefits, medical care and treatment, and obstetrical benefits, among others. The benefits, coverage, and premium details of each plan in the FEHB Program are negotiated with OPM each year. Eligible individuals can purchase additional dental and vision coverage through the Federal Employees Dental and Vision Insurance Program.

Each year, OPM issues guidance for health benefits carriers preparing FEHB plan benefits proposals. This guidance references OPM's commitment to ensuring that the Federal Government offers competitive, comprehensive health insurance benefits and includes OPM's policy goals and initiatives for the year. For 2023, these goals included advancing health equity, providing gender affirming care and services, and addressing obesity. This guidance outlines technical requirements for each proposal, including benefit package details such as actuarial value, benefit changes from the previous year, and the drug formulary. Carriers offering PSHB plans, as part of the FEHB Program, will be subject to the same or similar guidance. The PSRA requires that carriers offering PSHB plans will, to the greatest extent practicable, offer benefits and cost-sharing (e.g., deductibles, copayments and coinsurance) equivalent to the benefits and cost-sharing for FEHB plans for that carrier in the initial contract year.

Generally, Federal employees can continue FEHB enrollment into retirement if they have been enrolled in FEHB for five years before retiring or, if less than five years, for all periods in which they were eligible to enroll. FEHB enrollees can also enroll in Medicare when they become eligible for Medicare regardless of whether they are retired or still actively employed. Annuitants who are enrolled in FEHB and covered by Medicare have Medicare as their primary coverage.

C. PSHB Program Eligibility

Under the PSRA, Postal Service employees whose Government contribution under chapter 89 is paid by the Postal Service, Postal Service annuitants whose Government contribution under chapter 89 is required to be paid under 5 U.S.C. 8906(g)(2), and eligible family members of those Postal Service employees and Postal Service annuitants are eligible for coverage under the PSHB Program. Starting January 2025, these Postal Service employees and Postal Service annuitants may not enroll in an FEHB plan. The major difference in eligibility between PSHB plans and FEHB plans is that, generally, as a new condition of eligibility to enroll

in the PSHB Program, the PSRA requires that Postal Service annuitants and their eligible family members who are entitled to Medicare Part A (also referred to as “covered Medicare individuals”), must enroll in Medicare Part B, unless an exception applies.

A “covered Medicare individual” under section 8903c(a)(1) generally means an individual who is entitled to Medicare Part A, but the term excludes an individual who is eligible to enroll under section 1818 or 1818A of the Social Security Act (42 U.S.C. 1395i–2, 1395i–2a). Individuals eligible to enroll in Medicare Part A under 1818 are individuals age 65 or older who are not otherwise eligible for premium-free Medicare Part A, typically due to not having the required work history for premium-free Part A. Individuals eligible to enroll under 1818A are disabled individuals who lose Medicare coverage solely because of substantial gainful work. These individuals are exempt from the Medicare Part B enrollment requirement that applies to most other Postal Service annuitants and their PSHB-eligible family members.

For purposes of the FEHB Program, 5 U.S.C. 8901(5) defines a “member of family” of employees and annuitants to include spouses and children under 22 years of age, subject to exception, including natural children, adopted children, stepchildren, and foster children. The enactment of the Affordable Care Act in 2010 required health insurers to cover dependents until age 26. At that time OPM issued updates to its regulations to reflect that change and codified 5 CFR 890.302(b) and (c) which defines FEHB covered family members to include such children until they reach the age of 26, subject to exception. The PSHB Program will align with 5 CFR part 890 regarding the definition of family members for all purposes, including the Medicare special enrollment period (SEP) opportunity.

The PSRA adds new definitions to chapter 89. Section 8903c(a)(9) defines a Postal Service employee as “an employee of the Postal Service enrolled in a health benefits plan under this chapter whose Government contribution is paid by the Postal Service.” Under section 8903c(a)(8), a Postal Service annuitant “means an annuitant enrolled in a health benefits plan under this chapter whose Government contribution is required to be paid under section

8906(g)(2).” Therefore, individuals not meeting the statutory definition of a Postal Service annuitant or Postal Service employee are not eligible to enroll in a PSHB plan. If such individuals are eligible for enrollment in an FEHB plan, they may enroll or continue enrollment in such plan.

The PSRA does not establish a distinct category for Postal Service compensationers, those employees who sustain workplace-related illness or injury, receive workers’ compensation payments through the Department of Labor’s Office of Workers’ Compensation Programs (OWCP) because of that illness or injury, and who are determined by the Secretary of Labor to be unable to return to duty. Section 8901 of title 5, U.S.C. includes “an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty” in the definition of annuitant.² However, the PSRA definition of Postal Service annuitant is limited to those who are enrolled in a health benefits plan under 5 U.S.C. chapter 89, whose Government contribution is required to be paid under section 8906(g)(2).

Section 8906(g)(2) authorizes Government contributions for health benefits for individuals who become Postal Service annuitants “by reason of retirement” and their survivors. These contributions are paid first by the Postal Service Retiree Health Benefits Fund with any remaining amount paid by the Postal Service. The description in 8906(g)(2) does not include Postal Service compensationers, as they have not become annuitants by reason of retirement. Postal Service compensationers are more closely aligned with the 8903c(a) definition of Postal Service employee, whose Government contribution is paid by the Postal Service.

The definition of Postal Service employee, rather than Postal Service annuitant, will include Postal Service compensationers. Postal Service compensationers will not be subject to the Medicare Part B enrollment requirement, regardless of Medicare Part A entitlement.

² 5 U.S.C. 8901(3)(C).

Primary and Secondary Payers

The Centers for Medicare & Medicaid Services (CMS) generally considers those receiving worker's compensation payments to be employees. As described above, compensationers are considered to be employees within the meaning of 42 CFR 411.40, 411.43, and 411.45. Medicare is the secondary payer for all compensationers enrolled in an FEHB plan or a PSHB plan. Even if a compensationer is entitled to or eligible for Medicare benefits, enrolled in Medicare, and enrolled in an FEHB plan, Medicare is still the secondary payer, notwithstanding the statutory annuitant status for purposes of FEHB enrollment, with respect to those compensationers determined unable to return to duty. Should a Postal Service compensationer who is enrolled in a PSHB plan and entitled to or eligible for Medicare benefits choose to enroll in Medicare, that compensationers' Medicare coverage would be secondary to the PSHB plan coverage. Postal Service annuitants enrolled in Medicare and enrolled in a PSHB plan would have Medicare as primary coverage and PSHB plan coverage as secondary.

Impact on other benefits

Eligibility for the PSHB Program does not affect eligibility for other Federal benefits. Postal Service employees and Postal Service annuitants may continue to enroll and cover their eligible family members in the Federal Employees Dental and Vision Insurance Program (FEDVIP), Federal Employees' Group Life Insurance (FEGLI), Federal Long Term Care Insurance Program (FLTCIP), and, for Postal Service employees and their family members, participate in the Federal Flexible Spending Account Program (FSAFEDS).

Consultation with the Postal Service and Other Federal Agencies

The PSRA includes the following requirements for consultation between OPM and several other Federal agencies:

- 5 U.S.C. 8903c(e)(3)(B) requires that OPM, in consultation with the Secretary of Veterans Affairs, Secretary of Health and Human Services, and the Postmaster General, promulgate regulations implementing the Department of Veterans Affairs (VA) and

Indian Health Service (IHS) coverage exceptions to the Medicare enrollment requirements for certain Postal Service Medicare covered annuitants and family members enrolled in certain health care benefits provided by the VA, or eligible for IHS health services, within a year of enactment. OPM has engaged in this consultation since the PSRA was enacted.

- 5 U.S.C. 8903c(e)(4) requires OPM and the Postal Service, in consultation with the Social Security Administration (SSA) and CMS, to establish a process that will enable the Postal Service to timely inform Postal Service employees, Postal Service annuitants and the family members of Postal Service employees and annuitants of the Medicare enrollment requirements. OPM has engaged in this consultation since the PSRA was enacted.
- 5 U.S.C. 8903c(g)(2) requires OPM to consult with the Department of Health and Human Services (HHS) Secretary, VA Secretary, SSA Commissioner, and the Postmaster General in issuing regulations carrying out section 101 of the PSRA to include (1) a process to timely inform individuals of the enrollment requirements and how to request additional enrollment information in writing; (2) how an individual enrolled in PSHB can request a belated change of plan and be prospectively enrolled in a plan of the Postal Service employee's or Postal Service annuitant's choice; and (3) how individuals can cancel PSHB coverage in writing to the Postal Service because the individuals choose not to enroll in, or to disenroll from, Medicare Part B; and (4) any provisions necessary to implement the section. OPM has engaged in this consultation since the PSRA was enacted.
- 5 U.S.C. 8903c(l)(4)(B) requires the Postal Service to coordinate with OPM, and in consultation with CMS and SSA, to obtain and confirm accuracy of information as the Postal Service determines to be necessary to conduct the Health Benefits Education Program. 5 U.S.C. 8903c(l)(5)(C) requires the Postal Service, in consultation as

necessary with OPM and CMS, to develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

- 5 U.S.C. 8903c(1)(6) requires the Postal Service, as part of the regulations for the Health Benefits Education Program, to develop a process in consultation with OPM, SSA, and CMS for addressing inquiries from Postal Service employees and Postal Service annuitants about PSHB or Medicare enrollment.
- Section 101(c) of the PSRA requires OPM to establish a process by regulation to provide information to SSA regarding Postal Service annuitants and their family members who may be eligible to enroll in Medicare Part B during the special enrollment period (SEP) established by the PSRA under the Social Security Act. The section also requires SSA to provide information to OPM and the Postal Service regarding whether Postal Service annuitants and their family members are entitled to benefits under Medicare Part A and enrolled under Medicare Part B to assist OPM and the Postal Service in determining who may be eligible to enroll in Medicare Part B during the SEP, or who may be subject to the Part B enrollment requirements for PSHB eligibility. This interim final rule includes a process for OPM to provide information to SSA for these purposes.
- 5 U.S.C. 8909a(f) requires that OPM, after consultation with the Postal Service, promulgate any regulations determined necessary under section 102 of the PSRA with respect to the Postal Service Retiree Health Benefits Fund. OPM has addressed this provision in this regulation.

Provisions of Interim Final Rule

This interim final rule amends subparts A, C, and E of 5 CFR part 890 related to the FEHB Program and 48 CFR chapter 16, the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR). This interim final rule also adds a new subpart P to 5 CFR part 890 regulating the new PSHB Program within the FEHB Program.

This regulation establishes rules for the operation of the PSHB Program within the parameters of the PSRA. To the greatest extent possible, OPM is aligning these rules with the FEHB Program's treatment of FEHB plans. Where there is no existing rule applicable to FEHB plans, OPM is implementing the greatest flexibility for Postal Service employees, Postal Service annuitants, and their eligible family members.

5 CFR Part 890: Federal Employees Health Benefits Program

Subpart A: Administration and General Provisions

OPM is amending § 890.101 to add definitions specific to the PSHB Program, including Postal Service, Postal Service employee, Postal Service annuitant, PSHB plan, and PSHB Program. OPM is also adding definitions for FEHB plan and FEHB Program. These definitions explain the relationship between the FEHB Program and the PSHB Program. In short, the FEHB Program offers FEHB plans, and the PSHB Program within the FEHB Program offers PSHB plans. As a result, the FEHB Program offers both FEHB plans and PSHB plans.

Section 8903c(a) of the PSRA includes definitions for the new PSHB Program. A Postal Service Medicare covered annuitant is defined as an individual who is both a Postal Service annuitant and a covered Medicare individual (i.e., an individual entitled to benefits under Medicare Part A).³ Section 8903c(e) requires that Postal Service Medicare covered annuitants and eligible family members who are covered Medicare individuals enroll in Medicare Part B to enroll or maintain enrollment in a PSHB plan unless an exception described in section 8903c(e)(3) applies. Section 8903c(a) excludes those who are eligible to enroll in Medicare under section 1818 or 1818A of the Social Security Act from the definition of covered Medicare individual.

³ Section 8903(a)(1) defines the term 'covered Medicare individual' as "an individual who is entitled to benefits under Medicare part A but excluding an individual who is eligible to enroll under such part under section 1818 or 1818A of the Social Security Act."

OPM is adding a new § 890.115 to apply provisions of part 890 to Postal Service employees, Postal Service annuitants, and eligible family members unless the provision is inconsistent with PSRA law at 5 U.S.C. 8903c or the PSHB regulation in subpart P of part 890.

Subpart C: Enrollment

Postal Service employees and Postal Service annuitants will be eligible for enrollment in PSHB plans, not FEHB plans, starting with the initial PSHB contract year of 2025. Under 5 U.S.C. 8903c(d)(2), Postal Service employees and Postal Service annuitants may not enroll in FEHB plans for plan year 2025 or thereafter. OPM is adding a new § 890.301(p) to implement that prohibition, which will begin after December 31, 2024. There are no statutory exceptions to this prohibition on FEHB plan enrollment.

OPM is amending § 890.302 to apply to the whole of part 890, removing specific references to the FEHB Program to cover both FEHB plans and PSHB plans.

OPM is adding a new paragraph (l) to § 890.303 to indicate that a Postal Service employee eligible to enroll in a PSHB plan who moves to a Federal agency, without a break in service of more than three days, cannot continue in PSHB plan enrollment but may be eligible for FEHB plan enrollment if their position conveys eligibility. This is similar to the current FEHB rules that allow an employee to continue FEHB enrollment if they have a break in service of no more than three days.

Likewise, an employee who moves from a Federal agency to a PSHB-eligible Postal position, without a break in service of more than three days, may change to PSHB plan enrollment in the new job but otherwise may not maintain FEHB plan enrollment.

Enrollees in the PSHB Program will be subject to the FEHB Program requirement of maintaining enrollment for 5 years of service before retirement in order to carry that coverage

into retirement. A Postal Service annuitant who (at the time the individual becomes an annuitant) was enrolled in a health benefits plan under chapter 89, including under 8903c, can meet that 5-year requirement if they were so enrolled as a Postal Service employee, as an employee defined at 5 U.S.C. 8901(1),⁴ or a mix of both in order to maintain health benefits after retirement. That individual would maintain eligibility to continue enrollment in the FEHB plan or PSHB plan in which they were enrolled immediately before retirement. Subsequent changes in enrollment may be made, as permitted under chapter 89, from one FEHB plan to another FEHB plan, or from one PSHB plan to another PSHB plan under section 8903c, as applicable to the service from which the individual retired.

OPM's existing regulation at 5 CFR 890.303(d)(2), regarding employees who become survivor annuitants, continues to apply, as amended. The rule is expanded and now applies to an employee who is a survivor annuitant of a Postal Service employee or Postal Service annuitant and to a Postal Service employee or Postal Service annuitant who is a survivor annuitant of an employee. In either case, if an employee enrolled in a FEHB plan or a Postal Service employee enrolled in a PSHB plan separates with insufficient service to continue enrollment into retirement, but the separated individual is a survivor annuitant of an employee or annuitant, or of a Postal Service employee or Postal Service annuitant, and the separated individual is entitled to enroll as a survivor annuitant, the enrollment may be reinstated under the FEHB Program or PSHB Program as applicable to the service that gives rise to the survivor annuitant status.

In § 890.308, OPM is adding a new paragraph (i) that may require disenrollment from PSHB plans for Postal Service Medicare covered annuitants or removal from coverage of Medicare covered members of family who are not enrolled in Medicare Part B, unless an exception applies. Generally, unless an individual qualifies for an exception from the Medicare

⁴ The definition at 5 U.S.C. 8901(1) includes Federal employees and other categories of statutorily eligible individuals.

enrollment requirement, the individual will be disenrolled or removed from coverage from a PSHB plan if they have not enrolled in Medicare Part B (for example, during their seven-month Medicare Initial Enrollment Period (IEP), or applicable Medicare SEP). Pursuant to § 890.1612 in the new subpart P, OPM will share information regularly with SSA and CMS to confirm an individual's entitlement to Medicare Part A as well as enrollment or non-enrollment in Medicare Part B.

In a case where OPM, the PSHB Carrier, or the Postal Service belatedly learns that a Postal Service Medicare covered annuitant or eligible family member who is a covered Medicare individual who is enrolled or covered in a PSHB plan is not enrolled in Medicare Part B and does not qualify for an exception to the Medicare enrollment requirement, that individual will be permitted to stay enrolled in or covered by PSHB if they enroll in Medicare during their next enrollment opportunity, which may be the next Medicare General Enrollment Period. This opportunity to stay enrolled in PSHB despite lacking Medicare Part B coverage is not intended to allow a covered Medicare individual to maintain PSHB coverage without a good faith effort to remain continuously enrolled in Medicare Part B. The individual must enroll in Medicare Part B during that next available enrollment period (in this example, the next General Enrollment Period) and pay for any applicable late enrollment penalty assessed by CMS in order to remain in the PSHB plan. Such late enrollment penalty will increase the Medicare Part B premium as long as the individual is enrolled in Medicare Part B. If the Postal Service Medicare covered annuitant or eligible Medicare covered family member does not enroll in Medicare Part B at the next opportunity such as a Medicare General Enrollment Period, they will be disenrolled or removed from a PSHB plan and, in the case of a Postal Service annuitant, will have no further opportunity to re-enroll in a PSHB plan. Disenrollment of a Postal Service annuitant will also result in the removal of covered family members from PSHB coverage.

In any case where a Postal Service Medicare covered annuitant is disenrolled from a PSHB plan for non-enrollment in Medicare Part B, OPM will treat this removal as a termination. A termination, in contrast with a cancellation, confers rights to a 31-day temporary extension of coverage and rights to conversion for the enrollee and covered family members. Per existing FEHB regulation at 5 CFR 890.401, an enrollee or family member whose enrollment is terminated other than by a cancellation or discontinuance of plan is entitled to a 31-day temporary extension of coverage for self only, self plus one, or self and family without contributions by the enrollee or the Government. During that 31-day period, OPM requires carriers to either offer the individual a guaranteed-issue conversion policy or provide assistance enrolling in such a policy on or off the Health Care Marketplace or Exchange. OPM requests public comment on this approach.

New Subpart P: Postal Service Health Benefits Program

This new subpart P implements section 101 of the PSRA establishing the PSHB Program for Postal Service employees, Postal Service annuitants, and their eligible family members. The PSHB Program set forth at 5 U.S.C. 8903c will be the only health benefits program available to these individuals through 5 U.S.C. chapter 89, and PSHB plans will be offered in lieu of FEHB plans for these individuals beginning with the first contract year in January 2025.

In § 890.1602(c), OPM defines terms specific to the PSHB Program. Statutorily defined terms have the same meaning as in the PSRA. Several other terms are defined to account for the Medicare enrollment requirements for Postal Service Medicare covered annuitants and their Medicare covered members of family in the PSHB.

The term “cancel” carries the same meaning as in FEHB, applying when an individual elects not to continue coverage, despite remaining eligible. The PSRA uses the term “cancel” in section 8903c(g) to describe when an individual loses PSHB coverage because of a decision not to enroll in Medicare Part B, or to disenroll from Medicare Part B. OPM is using its

administrative authority to classify this circumstance as a termination in order to provide the individual with a 31-day temporary extension of coverage and rights to conversion. This classification of certain cancellations as terminations is delineated in § 890.1608(b)(5).

In § 890.1602(d), OPM deems references made to other subparts of part 890 to mean definitions established in subpart P. References incorporated in subpart P that do not apply to Postal Service employees or Postal Service annuitants or their eligible family members are not applicable and do not have meaning in subpart P.

Eligibility

As directed by the PSRA, § 890.1603, “Eligibility for the Postal Service Health Benefits Program,” allows that Postal Service employees, Postal Service annuitants, and family members will be eligible for coverage in the PSHB starting with the first contract year beginning January 2025. Under the PSRA, certain individuals are ineligible to enroll or be covered; they include:

- Postal Service Medicare covered annuitants without Medicare Part B coverage who are not covered by an exception in § 890.1604(c);
- Postal Service Medicare covered members of family who do not enroll in Medicare Part B and who are not covered by an exception in § 890.1604(c); and
- Any individual covered by another health benefits plan under chapter 89 of title 5, U.S.C. except as permitted under dual enrollment rules at § 890.302.

OPM is adding § 890.1603(d) to allow former spouses of Postal Service employees and Postal Service annuitants to enroll in an FEHB plan as described in subpart H (“Benefits for Former Spouses”). A former spouse of a Postal Service employee or Postal Service annuitant who is enrolled in an FEHB plan on or before December 31, 2024, may continue enrollment in an FEHB plan and is not required to change to a PSHB plan. Former spouses are not included in the PSRA as eligible for PSHB enrollment. Therefore, an individual who was covered under their spouse’s PSHB plan would not continue eligibility if they became a former spouse. Those

former spouses could enroll in an FEHB plan. Such former spouses will not be subject to the Medicare Part B enrollment requirement, regardless of Medicare eligibility or enrollment status. OPM invites comment on this approach.

OPM is adding § 890.1603(e) to allow survivor annuitants to be enrolled in PSHB plans in the same way they would have been enrolled in FEHB plans, with the addition of the Medicare enrollment requirement in § 890.1604.

Medicare enrollment requirement for certain annuitants

Section 890.1604(a) requires that certain Postal Service annuitants who are entitled to Medicare Part A, and their eligible family members who are entitled to Medicare Part A, enroll in Medicare Part B as a condition of eligibility to enroll in or continue enrollment in the PSHB Program. This implements section 8903c(e) of the PSRA and is a unique requirement as a condition of participation in a health benefits program under chapter 89 of title 5, U.S.C. This requirement applies regardless of whether the Postal Service annuitant becomes entitled to Medicare Part A due to age, disability status, or other eligibility pathway.

As described above, all Postal Service compensationers will be considered employees for the purposes of the PSHB Program and will not be subject to the Medicare Part B coverage requirement. PSHB enrollees and covered members of family who are entitled to Medicare Part A and enrolled in Medicare Part B are able to receive their Medicare Part A and B benefits through Original Medicare or by enrolling in an available Medicare Advantage plan. Individuals entitled to Part A and enrolled in Part B may be able to buy Medigap policies, subject to certain requirements.

Disenrollment for non-enrollment in Medicare Part B

OPM is amending § 890.308, “Disenrollment and removal from enrollment,” to add a new paragraph (i) to insert cross reference to new § 890.1608(b), which describes the

circumstances under which an individual can be disenrolled from a PSHB plan for non-enrollment in Medicare Part B.

Postal Service Medicare covered annuitants and their Medicare covered members of family will be required to enroll in Medicare Part B at their first opportunity, usually within the 7-month IEP around their 65th birthday or during an SEP if they are over the age of 65 and still in active employment. An individual can be removed or disenrolled from a PSHB plan if they do not enroll within those enrollment periods unless they qualify for an exception detailed in § 890.1604(c).

A Postal Service Medicare covered annuitant or Medicare covered member of family could be determined ineligible for PSHB if not enrolled in Medicare Part B. An individual can be disenrolled or removed from a PSHB plan any time after OPM, the PSHB Carrier, or the Postal Service determines that a Medicare covered annuitant or Medicare covered member of family required to be enrolled in Medicare Part B is not so enrolled. The process for disenrollment or removal from a PSHB plan for non-enrollment in Medicare Part B is detailed in § 890.1608(b).

Exceptions to Medicare Part B enrollment requirement

Section 890.1604(c) describes the statutory exceptions to the Medicare Part B enrollment requirement for Postal Service Medicare covered annuitants and their Medicare covered members of family. Those exceptions are:

- Individuals who, as of January 1, 2025, are Postal Service annuitants who are not both entitled to benefits under Medicare Part A and enrolled in Medicare Part B;
- Individuals who, as of January 1, 2025, are Postal Service employees who are aged 64 and over;

- Postal Service Medicare covered annuitants and family members residing outside the United States and its territories who demonstrate their residency in accordance with Postal Service regulations;
- Postal Service Medicare covered annuitants and their family members enrolled in certain VA health care benefits. This exemption is derived from 5 U.S.C. 8903c(e)(3)(A)(iv)(II), which refers to individuals “enrolled in health care benefits provided by the Department of Veterans Affairs under subchapter II of chapter 17 of title 38, United States Code.” Subchapter II of chapter 17 of title 38, U.S.C. governs who is eligible for various VA health care benefits, including eligibility for VA hospital care and medical services. There is a limited class of veterans who are not required to enroll in the system of patient enrollment referred to in 38 U.S.C. 1705(a) in order to receive VA benefits described in subchapter II of chapter 17 of title 38, United States Code. As such, this regulation is drafted to include all veterans described in 38 U.S.C. 1710, including those who are not required to enroll in the VA’s system of patient enrollment referred to in 38 U.S.C. 1705(a);
- Postal Service Medicare covered annuitants and family members eligible for health services provided by the Indian Health Service; and
- A Medicare covered member of family of a Postal Service Medicare covered annuitant who is not required to enroll in Medicare Part B, based on a statutory exception, in order to be eligible for PSHB coverage.

Section 890.1604(c) satisfies the requirement in 5 U.S.C. 8903c(e)(3)(B) that OPM promulgate regulations to implement the VA and IHS coverage exceptions. OPM consulted with VA and IHS beginning in the Spring of 2022 to draft these policies. IHS strongly recommends that Medicare covered Postal Service annuitants and their family members be permitted to use self-attestation as proof of eligibility for IHS health services for purposes of an exception to the

Medicare Part B requirement. There are various acceptable documents or evidence that IHS uses as proof of eligibility for IHS health services, and OPM recommends accepting these as proof for the Medicare Part B exception. OPM seeks comment on this approach. Section 890.1604(d) describes how Medicare covered annuitants and Medicare covered members of family can demonstrate that they qualify for an exception to the Medicare enrollment requirement.

As required by the PSRA, § 890.1604(e) allows a Medicare covered annuitant or Medicare covered family member to notify the Postal Service in writing that they choose not to enroll or to disenroll from Medicare Part B. Per the PSRA statute, this would have the effect of cancelling PSHB enrollment. OPM will treat this circumstance as a termination, conferring rights to a 31-day temporary extension of coverage and conversion. OPM invites comment on this approach, which is intended to implement a member-centric approach to the transition to the PSHB Program.

Suspending PSHB enrollment for other forms of coverage, including Medicare Advantage

Under 5 CFR 890.304(d)(2), an annuitant or survivor annuitant may suspend FEHB enrollment if they choose to get certain alternative coverage, including Medicare Advantage (MA), Medicaid or a similar state-sponsored program of medical assistance for the needy, Peace Corps, CHAMPVA, TRICARE (including coverage provided by the Uniformed Services Family Health Plan), or TRICARE-for-Life. These rules will apply to the PSHB Program. While PSHB enrollment is suspended, no PSHB premiums would be required. These individuals can re-enroll in a PSHB plan, subject to subpart P requirements, for instance, during the next Open Season, when they involuntarily lose coverage, or move out of an MA Plan's service area.

PSHB enrollment when an individual is under a court or administrative order to provide health coverage

The Federal Employees Health Benefits Children's Equity Act of 2000 (Public Law 106-394) codified at 5 U.S.C. 8905(h) requires OPM to compel appropriate FEHB enrollment of an eligible employee in the presence of a court or administrative order for health insurance coverage of children and to prohibit the discontinuation of such enrollment by an annuitant who continued coverage into retirement. This law will be applied with respect to PSHB enrollment for those Postal Service employees who are under a court or administrative order to provide health insurance coverage and with respect to those Postal Service annuitants for whom a court order continues from when they were an employee, to the extent the Postal Service annuitant remains enrolled in a PSHB plan.

A Postal Service employee or Postal Service annuitant would be subject to the rules concerning court and administrative orders in the same way as employees and annuitants enrolled in an FEHB plan; however, the provisions of 5 U.S.C. 8905(h) cannot be fully and properly applied with respect to Postal Service annuitants for whom a court order continues from when they were an employee. While OPM has authority to compel enrollment in a PSHB plan and withhold the appropriate share of contribution toward premiums, the PSRA includes no authority for OPM to compel enrollment in Medicare Part B by Postal Service Medicare covered annuitants on the grounds of a court order for coverage of children. Further, a Postal Service annuitant who is subject to a court or administrative order to provide health insurance coverage could be disenrolled from PSHB coverage because of non-enrollment in Medicare Part B. In such a circumstance, the child would be without PSHB coverage despite the court or administrative order, and OPM would be without authority to compel continued enrollment in PSHB by a Postal Service annuitant who is required to be enrolled in Medicare Part B as a condition of PSHB enrollment but is not so enrolled.

PSHB Plan Year

The PSHB plan year will run from January 1 to December 31 each year starting in 2025. Any Open Season enrollment, change of enrollment, or reenrollment will take effect on January 1 of each year starting in 2025. The PSHB plan year is in contrast to the effective date of new FEHB enrollments by employees during the annual Federal Benefits Open Season, which is the first day of the first pay period that begins in the next year, and which follows a pay period during any part of which the employee is in a pay status. *See* § 890.301(f)(4)(i). For Open Season changes in FEHB enrollment for Postal Service employees, the effective date is the first day of the first pay period that begins in January of the next year. *See* § 890.301(f)(4)(ii). Under the current regulations, the effective date for FEHB enrollments and changes in enrollment may be different each year based on which day in January is the first day of the pay period.

OPM is making this change because a calendar year start date is easier for enrollees to track and follow their PSHB coverage. In addition, setting the PSHB plan year start date to January 1 would be consistent with the industry standard; the cutoff date for Postal Service Medicare covered annuitants who are listed as exceptions to the Medicare enrollment requirement; the effective date of benefit changes under OPM's contracts with carriers; health savings accounts for high deductible health plans; flexible spending accounts; coverage under the FEDVIP; and payments to compensationers.

A standard January 1 start date to the plan year may present certain challenges, which became apparent when OPM proposed such a change for the FEHB Program in 1998.⁵ Such challenges include an effective way to collect and pro-rate FEHB premiums when one switches plans, given that January 1 is in the middle of a pay period for most Federal and Postal Service employees. Because of these challenges, OPM eventually withdrew the 1998 proposed rule in 2003.⁶

⁵ <https://www.federalregister.gov/d/98-23335> (63 FR 46180, August 31, 1998).

⁶ <https://www.federalregister.gov/d/03-31768> (68 FR 74513, December 24, 2003).

OPM believes the prior challenges are mitigated by the advancement of technology, including the establishment of a centralized enrollment system for the PSHB Program. OPM also believes that payroll offices and other stakeholders will have the necessary lead time to make all appropriate system changes to accommodate this effective date.

OPM invites comments on a January 1 plan year start date for the PSHB Program. OPM invites comments on the operational feasibility of implementing a standard January 1 effective date for Open Season PSHB enrollment actions, including any challenges relating to premium allocation and whether it makes a difference if the centralized enrollment system calculates and requests the partial premium versus the Federal payroll provider.

Enrollment

Section 890.1605 establishes enrollment in the initial contract year, including a transitional Open Season that coincides with the standard FEHB Program Open Season in 2024 for enrollment in health benefits plans offering coverage in 2025. Definitions are included in § 890.1605(a), and the transitional Open Season is defined in § 890.1605(b). Consistent with 5 U.S.C. 8903c(f), the PSHB transitional Open Season will run at the same time as the standard FEHB Open Season outlined at § 890.301(f), starting the Monday of the second full workweek in November, going through the Monday of the second full workweek in December. This is the time period for Postal Service employees and Postal Service annuitants to select and enroll or continue enrollment, or choose not to enroll or continue enrollment, in a PSHB plan. Starting with the 2024 Open Season, Postal Service employees and Postal Service annuitants are ineligible to enroll or continue enrollment in FEHB plans for the 2025 plan year and thereafter.

Automatic enrollment into a PSHB plan for the initial contract year is described in § 890.1605(c). The PSRA requires that FEHB-enrolled Postal Service employees and Postal Service annuitants that do not make an election to enroll in a PSHB plan during the transitional Open Season will be automatically enrolled in a PSHB plan offered by their current FEHB

Carrier to begin January 2025. If the carrier offers multiple PSHB plans or options, the individual will be automatically enrolled in the carrier's plan and option with equivalent or most similar benefits and cost-sharing to the individual's current FEHB plan. In a case where the carrier is not offering PSHB plans, those individuals will be automatically enrolled in the lowest-cost nationwide PSHB plan option that is not a high deductible health plan and does not charge an association or membership fee. All automatic enrollments will be into a PSHB plan of the same enrollment type (self only, self and family, or self plus one) as the 2024 FEHB plan.

In the FEHB Program, employees in a nonpay status, such as leave without pay, are not generally able to enroll in an FEHB plan during Open Season. OPM is changing this policy for the PSHB Program for the transitional Open Season in 2024 only. FEHB enrollments and FEHB plan eligibility will terminate at the end of 2024 for all Postal Service employees. Since these individuals can't continue their FEHB plan enrollment into 2025, OPM will permit Open Season elections for eligible Postal Service employees, regardless of pay status with the exception of § 890.303(e) individuals whose enrollment is terminated due to 365 days of nonpay status, for the 2024 Open Season only. OPM invites comment on this approach, which is intended to implement a member-centric approach to the transition to PSHB coverage.

Continuity of enrollment

Continuity of enrollment for PSHB is detailed in § 890.303 ("Continuation of enrollment"). As described above, OPM is updating the list of exclusions from the continuation of enrollment requirements.

Retroactive enrollment and termination

Section 890.103 allows for OPM to correct administrative FEHB plan enrollment errors, including retroactive actions such as enrollments and correction of enrollment code errors. Such corrective actions are subject to appropriate withholding and contributions of premiums, which

requires payment from the employee or annuitant for each pay period they are enrolled in a health benefits plan.

These correction of errors provisions will apply in the PSHB Program, as laid out in § 890.1614. This new section adds a clause to state “except that retroactive corrections to an enrollment under this subpart may not go further back than the initial contract year.” This is to establish that there cannot be a retroactive correction to a PSHB enrollment before the initial contract year of the PSHB Program.

Terminations are addressed in the FEHB Program according to rules in § 890.304. Section 890.304(b)(2) allows an annuitant whose coverage was terminated due to insufficient annuity to pay withholdings for the health benefits plan in which the annuitant was enrolled, to request reinstatement of coverage from the retirement systems when they failed, due to circumstances beyond their control, to directly pay premiums or to make an election to change enrollment to a health benefits plan so that their annuity was sufficient for the new withholdings. In this circumstance, the retirement system may reinstate coverage retroactively to the termination date.

Although 5 U.S.C. 8903c(d)(2) prohibits Postal Service employees and Postal Service annuitants who are covered in PSHB plans from enrolling or continuing enrollment in FEHB plans after 2024, the statute does not prohibit retroactive enrollment into a FEHB plan for an effective date beginning on or before December 31, 2024, before the start of the PSHB Program. Such retroactive enrollments may occur, for instance, due to an enrollment processing error that pre-dated the first contract year of the PSHB Program.

Plan Contracting

Section 890.1610 outlines the minimum standards for PSHB Carriers and plans, including a requirement to provide Medicare prescription drug benefits to Medicare Part D-eligible annuitants and family members pursuant to 5 U.S.C. 8903c(h). Section 8903c(c)(1)(B) of

title 5, U.S.C. requires that PSHB plan contracts under the PSHB Program are consistent with the requirements of chapter 89 for FEHB plan contracts under section 8902. The minimum standards for PSHB Carriers will be the same as for FEHB Carriers as described at 48 CFR 1609.70, with the addition of the new § 1609.7002 outlining the minimum standards for PSHB Carriers. A PSHB plan must meet the minimum standards at 5 CFR 890.201. All PSHB plans must have coverage effective on January 1 of each contract year.

As required by 8903(c)(1)(C), the FEHB Program will offer, to the greatest extent practicable, a PSHB plan from each FEHB Carrier that has a plan with 1,500 or more Postal Service employees or Postal Service annuitants enrolled in the 2023 contract year. In the initial contract year, PSHB Carriers must offer PSHB plans that have coverage with equivalent benefits and cost-sharing to the FEHB plans offered by that carrier, except to the extent needed to integrate Medicare Part D prescription drug benefits. If the FEHB plans offered by a carrier do not meet the requirements under Medicare Part D, then the carrier will need to adjust its corresponding PSHB plan accordingly. A carrier's prescription drug coverage may be different in its PSHB plan than in its FEHB plan.

OPM has the authority to exempt comprehensive medical plans, as described in 5 U.S.C. 8903(4), from the requirement that the PSHB Program include, to the greatest extent practicable, a plan offered by any FEHB Carrier that has a plan with 1,500 or more Postal Service enrollees. Comprehensive medical plans are defined in FEHB statute as one of four health plan categories that OPM is authorized to contract for. The term "comprehensive medical plans" refers to health maintenance organizations (HMOs). Many of these HMOs are regional rather than nationally available plans.

PSHB plans will offer the same enrollment types as FEHB plans, including self only, self plus one, and self and family coverage. Only Postal Service employees and Postal Service annuitants, including survivor annuitants, and those eligible for temporary continuation of

coverage (TCC), may enroll in PSHB plans established under new subpart P of part 890. Those eligible to enroll may add eligible family members to their enrollment.

Medicare Part D prescription drug coordination

The PSRA requires plans in the PSHB Program to provide prescription drug benefits through Medicare Part D for Part D-eligible Postal Service annuitants and their Part D-eligible family members. Under 5 U.S.C. 8903c(h), PSHB plans are required to provide prescription drug benefits to these individuals through “employment-based retiree health coverage” either through a “prescription drug plan (PDP)” or a contract with a “PDP sponsor” of a prescription drug plan, as terms are defined in section 1860D-22(b), 1860D-41(a)(14), and 1860D-41(a)(13) of the Social Security Act, respectively.

A carrier offering employment-based retiree health coverage, defined in section 1860D-22(c)(1) of the Social Security Act and referred to in section 5 U.S.C. 8903c(h)(2) and a conforming amendment to 1860D-22(b), may provide prescription drug coverage through an employer group waiver plan or EGWP (for a discussion of EGWPs, *see* Prescription Drug Benefit Manual, Chapter 12,⁷ Application of CMS Employer Group Waiver Authority).

To ensure compliance with 5 U.S.C. 8903c(h)(2) of the PSRA, a carrier seeking to offer a Medicare Advantage Prescription Drug (MA-PD) plan to PSHB members *must* offer prescription drug coverage for Part D-eligible Postal Service annuitants and their Part D-eligible family members through a PDP or through a contract with a PDP Sponsor and *may*, subject to OPM’s approval, offer MA-PD coverage as an alternative for these individuals to elect, should they so choose. Consistent with FEHB Program policy and current FEHB contract provisions, OPM will consider carrier applications for PSHB plans that coordinate with EGWP MA-PDs, subject to the requirements in 8903c(h)(2) and negotiation with OPM.

⁷ CMS, *Medicare Prescription Drug Benefit Manual*, Chapter 12, “Employer/Union Sponsored Group Health Plans,” Rev. November 7, 2008, at <https://www.cms.gov/regulations-and-guidance/guidance/transmittals/downloads/dwnlds/r6pdbpdf>.

OPM right to withdraw or non-renew

Section 890.1611 describes OPM's right to withdraw approval of any PSHB plan or carrier, and to give notice of non-renewal of any health benefits plan contract for failure to meet applicable standards.

Separate PSHB reserves

Section 890.1610(a)(4) implements the requirement at 5 U.S.C. 8903c(j) that OPM maintain separate reserves, including contingency reserves, for each PSHB plan. These reserves will include an account in OPM's administrative reserve and a contingency reserve for each plan, established under and governed by 5 CFR 890.503, 48 CFR chapter 16, and carrier contract.

Information sharing

Section 890.1612 requires OPM to enter into agreements with other agencies for information exchange necessary to implement the PSHB Program. As required by section 101(c)(2) of the PSRA, OPM will exchange information to SSA as necessary regarding Postal Service annuitants and their family members who may be subject to the Medicare enrollment requirements described in § 890.1604 or who may be eligible to enroll in Medicare Part B during the new Part B six-month SEP (beginning April 1, 2024) which was created by the PSRA as available to certain Postal Service annuitants and family members who are entitled to Medicare Part A and is described in section 1837(o) of the Social Security Act. In addition, OPM will establish periodic agreements with HHS, the Postal Service, VA, and other Federal agencies as needed to share data and information as is necessary to implement the PSHB Program.

These periodic agreements will specify the data elements that will be shared, the process for information sharing, the frequency of information sharing, and how that data can be used and disclosed. The purpose of these agreements is to determine (1) which Postal Service employees,

Postal Service annuitants, and family members may be eligible to enroll in or be covered by in PSHB plans, (2) which Postal Service Medicare covered annuitants and Medicare covered members of family may be subject to the enrollment requirements described in § 890.1604, (3) whether Postal Service Medicare covered annuitants and Medicare covered members of family satisfy the Medicare enrollment requirements at § 890.1604, (4) which Postal Service annuitants and family members may be eligible to enroll in Medicare Part B during the six-month SEP beginning April 1, 2024 under a new section 1837(o) of the Social Security Act, and (5) a system for data sharing as needed for carrying out section 8903c of title 5, United States Code, and this subpart.

Premium payment

The calculations for contributions and withholdings for PSHB will be made in the same manner as 5 U.S.C. 8906 and subpart E of 5 CFR part 890. The Postal Service Government contribution will be determined using the calculation at section 8903c(i) of title 5, United States Code. Section 8903c(i)(3) states that OPM, when computing the weighted average of the rates offered by carriers for the initial PSHB contract year, shall take into account the enrollment of Postal Service employees and Postal Service annuitants in those carriers' plans as of March 31, 2023. Nonetheless, because OPM expects to have significantly more current Postal Service enrollment data available, OPM intends to use all available 2024 Postal Service enrollment information when determining the 2025 weighted average of the rates for the initial contract year, taking into account 2023 data as a comparison point and for validation purposes, or in the event 2024 data is not available. For all subsequent years, the PSHB plans and FEHB plans will each have the Government contributions calculated in accordance with § 890.501.

Some Postal Service Medicare covered annuitants and/or their Medicare covered members of family who enroll in Medicare during the SEP beginning April 1, 2024, may be subject to a Medicare Part B late enrollment penalty. This penalty is added to the monthly

Medicare Part B premium and is usually charged for as long as the individual is enrolled in Medicare. The amount of the Part B late enrollment penalty depends on how long the individual waited to enroll after their initial period of Medicare eligibility. The PSRA requires that the Secretary of HHS enter into an agreement with the Postal Service under which the Postal Service agrees to pay on a quarterly or other periodic basis to the Secretary the amount of the Part B late enrollment premium increases for eligible individuals who enrolled during the SEP. In addition, the PSRA states that the Postal Service may direct OPM to pay such Part B late enrollment penalties for Postal Service Medicare covered annuitants or Medicare covered members of family who enroll in Part B during the 2024 SEP subject to the agreement between the Postal Service and HHS from the PSRHBF established under 5 U.S.C. 8909a until those funds are depleted. Thereafter, those payments will be paid from the Postal Service Fund established under 39 U.S.C. 2003.

USPS Fairness Act

Section 102 of the PSRA (“USPS Fairness Act”) directs OPM to annually calculate a payment to be made by the Postal Service into the PSRHBF beginning in June of 2026. This payment replaces the previously required actuarially determined pre-funding payments (normal cost and amortization) calculated annually by OPM from 2017 through 2021.

The payment into the PSRHBF required under the PSRA is not an actuarially determined pre-funding payment, though OPM’s actuaries are responsible for calculating the new formula driven payment into the fund starting in 2026. The PSRA provides the formula by which OPM is to calculate the payment, which is defined as the difference between the Postal Service share of Postal Service annuitant premiums less estimated net claims costs. The PSRA defines estimated net claims costs as the difference between the sum of the costs incurred by the carrier for health services provided to Postal Service annuitants and reasonable administrative expenses less the Postal Service annuitants’ share of premium.

Section 102 states that “[a]fter consultation with the United States Postal Service, [OPM] shall promulgate any regulations the Office determines necessary under this subsection.” OPM has determined that the formula is sufficiently defined in the law and defining it further in regulation is unnecessary. OPM invites comment on this approach.

The PSRA revises the language under 5 U.S.C. 8909a to provide that any calculation required under 39 U.S.C. 3654(b) should be based on current Postal Service annuitants and current Postal Service employees who would be eligible to retire under 5 U.S.C. 8901(3)(A)(i) or (ii) and who have the required years of health coverage to continue health benefits in retirement. Pursuant to 39 U.S.C. 3654(b), OPM is required to calculate and provide certain information for the Postal Service financial reporting on both health benefits and pension obligations as provided under chapters 83 and 84 of title 5. However, the requirements in the PSRA involving 39 U.S.C. 3654(b) apply only to health benefits and the CSRS and FERS statutes do not provide any similar requirement pertaining to section 3654(b). It would not be appropriate to calculate any pension obligations in the manner now required under 5 U.S.C. 8909a for post-retirement health benefits. As a result, OPM is interpreting the new PSRA provision in section 8909a as applying only to the “post-retirement health requirements” in 39 U.S.C. 3654(b). OPM invites comment on this approach.

The term ‘future net claims costs’ as used in PSRA section 102(e)(1) does not have a definition in regulation or statute. Section 890.1613(e) clarifies that OPM interprets “future net claims costs” in section 102(e)(1) to be the same as “estimated net claims costs” as defined in section 102(g). OPM invites comment on this approach.

Centralized Enrollment

Since the inception of the FEHB Program in 1960, OPM has prescribed regulations over time that place responsibility for health benefits actions on to an “employing office,” as defined at 5 CFR 890.101, an “employing agency,” or an “agency.” Consequently, the FEHB Program’s

enrollment functions are not handled by OPM but are dependent on decentralized processes that utilize independent systems at different Federal agencies. Therefore, the Postal Service or other employing office⁸ is responsible for processing appropriate requests for FEHB enrollment or changes in enrollment. *See, e.g.,* 5 CFR 890.301(b). An employing office is also responsible for verifying the eligibility of family members. *See* 5 CFR 890.302.

For purposes of the PSHB Program, OPM will shift certain responsibilities from the employing office to a centralized enrollment system which will be administered by OPM or its contractor. As envisioned, the centralized enrollment system will be an electronic enrollment solution for all PSHB stakeholder groups including enrollees, the Postal Service and other employing offices, and PSHB Carriers. The centralized enrollment system will include an online portal to enter and process enrollment transactions, robust decision support tools, and a customer support center to assist enrollees via phone, email, or online chat. Persons who are unable to access the online portal will be able to enroll through other means such as phone, fax, or mail.

To support the establishment of centralized enrollment for the PSHB Program, OPM is adding several regulatory provisions. OPM may also issue guidance to further delineate responsibilities regarding PSHB enrollment.

Specific Regulatory Provisions

In addition to any future guidance, in §§ 890.1605, 890.1606, 890.1608, and 890.1614, OPM is specifying that OPM will assume responsibility for the following health benefits actions for the PSHB Program: enrollment, changes of enrollment, correction of errors, election not to enroll, and disenrollment of enrollees and removal of family members. OPM will work with the Postal Service and other employing offices to determine additional details about these health benefit actions.

⁸ The Postal Service is the employing office for Postal Service employees. OPM Retirement Services is the employing office for Postal Service annuitants. The Department of Labor's Office of Workers' Compensation Programs is the employing office for compensationers. The Department of Agriculture's National Finance Center is currently the employing office for individuals enrolled under Temporary Continuation of Coverage, Spouse Equity, and for annuitants whose annuity is insufficient to withhold the cost of health benefits premiums.

Reconsideration of Initial Decisions

An individual who has received an initial decision affecting their enrollment in the PSHB Program may request a reconsideration of that initial decision. Individuals will be made aware of their right to an independent review and the time, manner, and entity to which the reconsideration request must be made.

Administrative Provisions

As described above and included in § 890.1614(a), correction of errors for PSHB enrollments will follow the rules for FEHB correction of errors, except that a PSHB enrollment cannot be corrected to be effective before the first PSHB contract year.

Section 890.1614(b) requires that carrier entitlement to pursue subrogation and reimbursement recoveries must follow the requirements of § 890.106.

Section 890.1614(c) requires reconciliation of PSHB enrollment between OPM and each PSHB Carrier in a form and manner to be determined by OPM. If a Medicare covered annuitant or member of family is found not to be enrolled in Medicare Part B in violation of the requirements of § 890.1604, that individual may be disenrolled or removed from PSHB enrollment or coverage.

C. Structure of the Interim Final Rule

The regulations outlined in this interim final rule are codified in subparts A, C, E, and the new subpart P of 5 CFR part 890 and 48 CFR chapter 16.

Interim Final Rule with Request for Comments

OPM commonly publishes notices of proposed rulemaking in the Federal Register and invites public comment on rules before the provisions of the rules are finalized, either as proposed or as amended in response to public comments, and take effect, in accordance with the Administrative Procedure Act (APA) at 5 U.S.C. 551 *et seq.* and, where applicable, the Civil Service Reform Act of 1978 (CSRA) at 5 U.S.C. 1103(b).

Specifically, 5 U.S.C. 553 and 1103(b) require the agency to publish a notice of certain proposed rules in the Federal Register that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, the APA at 5 U.S.C. 553(c) requires agencies to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of a rule take effect.

However, the APA also provides that traditional notice and comment procedures are not required when, as relevant here, the agency for good cause finds that following those procedures would be impracticable, 5 U.S.C. 553(b)(B), and the CSRA includes a “parallel exception,” *National Federation of Federal Employees v. Devine*, 671 F.2d 607, 610 (D.C. Cir. 1982); *see* 5 U.S.C. 1103(b)(3). “[A] situation is impracticable when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required . . . as when a safety investigation shows that a new safety rule must be put in place immediately.” *Util. Solid Waste Activities Group v. E.P.A.*, 236 F.3d 749, 754 (D.C. Cir. 2001) (quotation marks and alterations omitted); *see Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 93 (D.C. Cir. 2012). OPM finds that following typical notice and comment procedures would be impracticable here because doing so would not allow sufficient time for the PSRB to be in effect by January 2025, as required by the PSRA. As explained further below, failure to meet this deadline would not only violate the PSRA but would also result in a potential gap in health insurance coverage for Postal Service employees, Postal Service annuitants, and their families. OPM is therefore issuing this

interim final rule with request for comment—a temporary measure before OPM issues a final rule in response to comments received.

The deadlines that Congress has specified in the PSRA require this rule to become effective expeditiously. The PSRA provides in part that the Director of OPM shall issue regulations to carry out the PSHB provisions no later than April 6, 2023—just one year after statutory enactment—in consultation with the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Commissioner of Social Security, and the Postmaster General. *See Devine*, 671 F.2d at 611 (“This is not a case in which the agency received substantial prior notice of a statutory deadline[.]”). The law also requires that health coverage through a PSHB plan must begin in January 2025 and that Postal Service employees and Postal Service annuitants enroll for coverage during an annual Open Season period beginning in 2024.

To meet these statutory deadlines, this rule must go into effect immediately. That is so because until this rule is in place, OPM and the health insurance industry cannot engage in the complex process necessary to develop health insurance plans, make those plans available for enrollment during the 2024 Open Season, and effectuate coverage on January 1, 2025. And that complex process must begin now; specifically:

- For OPM to develop its enrollment plan strategy, and to determine the number, type, and location of FEHB plans committed to participating in the PSHB, OPM needs health insurance carriers seeking to participate in the PSHB Program to submit applications to OPM in *August 2023*—just four months from issuance of this interim final rule. To prepare those applications, health insurance carriers will need to understand the requirements of the PSHB Program, including how they may differ from FEHB plans in a number of key areas. These areas include the Medicare Part D coverage integration requirements for PSHB plans, Medicare benefit coordination, and data exchange capabilities for PSHB enrollment eligibility which include data regarding an individual’s entitlement for Medicare Part A and enrollment in Part B, their VA benefit enrollment

status, and/or IHS eligibility. Carriers will need to know the implications of the requirements and capabilities outlined in this rule—and will need them to have effect—in order to (1) make a business decision about whether to participate in the Program and (2) put together a proposed plan that aligns with the requirements of this rule.

- OPM will then need to review such applications to ensure that the plans will satisfy requirements set forth in this rule by the Program start date. Review and vetting of carrier applications—including the financial fitness of the proposed PSHB plan, Postal-specific information system capabilities, and adherence to Medicare Part D coordination requirements such as plans arranging for prescription drug plan coverage—must occur during the *Fall of 2023*.
- In *October 2023*, the Postal Service is required by the PSRA to launch a Health Benefits Education Program to raise employee and annuitant awareness of the PSHB Program and its requirements through the distribution of information and facilitation of enrollment in available plans. While specific information such as rates and benefits will not be available until later in 2024, the Postal Service will structure this Education Program based on the requirements for the PSHB Program as set forth in this rule. Knowledge of the Program’s requirements and the health insurance carriers that have applied to participate in the Program starting in 2023 will assist enrollees in understanding the decisions they will need to make.
- *Throughout 2023 and 2024*, OPM will, among other things, develop, test, and implement a Postal Service centralized enrollment system, which will be used by PSHB enrollees to select health plans for the 2025 plan year. OPM must integrate Medicare Part A entitlement and Medicare Part B enrollment data in accordance with existing FEHB regulations and the new PSHB requirements, as set forth in this rule that implements the PSRA. Enrollment data processed by the centralized enrollment system will be

transmitted to PSHB Carriers, who will begin serving these enrollees starting January 1, 2025.

- In *April of 2024*, CMS will launch the six-month SEP, during which time Postal Service annuitants and their family members will have the opportunity to enroll in Medicare Part B, without a late enrollment penalty for the Part B enrollee. If Postal Service annuitants and their family members eligible for the SEP are not timely informed that they have this opportunity to enroll in Medicare Part B without having to pay a late enrollment penalty and how to do so, they may incur the standard late enrollment penalty if they subsequently wish to enroll in Part B, should they choose to do so, and such late enrollment penalty could remain in place for as long as they remain enrolled in Part B.
- By *May 31, 2024*, PSHB Program carriers will need to submit rates and benefits proposals to offer health plans for the 2025 plan year.
- In *September 2024*, OPM will publish the negotiated PSHB plan rates and benefits for the 2025 plan year.
- Open Season for enrollee selection of PSHB plans will occur from November 11 through December 9, 2024.

As this timeline makes clear, there are numerous operational interdependencies—beginning with carriers submitting applications to participate in the PSHB Program by August 2023—that necessitate the immediate effectiveness of this regulation. The immediate effectiveness of this rule is necessary not only for OPM to meet the statutorily required January 1, 2025 deadline for providing benefits to enrollees, but also because a failure to do so could result in a loss of healthcare coverage for Postal Service employees, annuitants, and their families. After December 31, 2024, Postal Service employees or Postal Service annuitants will no longer be eligible to enroll in an FEHB plan based on status as a Postal Service employee or Postal Service annuitant, and their family members will no longer be covered by such plan. Accordingly, § 890.1605 establishes that PSHB plans must be available to enroll individuals

during the 2024 Open Season, starting on November 11, 2024. If PSHB plans are not available, those individuals may experience a gap in health insurance coverage, and people without insurance coverage have worse access to care and experience worse health outcomes than people who are insured. *See* Office of Disease Prevention and Health Promotion. (n.d.). Access to Health Services. *Healthy People 2030*. U.S. Department of Health and Human Services. <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/access-health-services>; *see also* 42 U.S.C. 18091(2)(E) (observing the “poorer health and shorter lifespan of the uninsured”). Among the catalysts of poorer health is the decreased use of preventive services by individuals experiencing gaps in health insurance coverage, even if only for a relatively short period of time, and especially for individuals at or near retirement age. *See* Sudano, J.J. Jr., Baker, D.W. (2003). *Intermittent Lack of Health Insurance Coverage and Use of Preventive Services*. *Am. J. Public Health*, 93:130–37, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447707>. These services include mammography, Pap tests, cholesterol checks, flu vaccination, and prostate and breast cancer screenings. *Id.*

Additionally, OPM is obligated to provide Postal Service employees and Postal Service annuitants an opportunity to enroll in health insurance plans for which they are eligible under current statutory provisions, including provisions granting Postal Service employees and Postal Service annuitants eligibility under chapter 89. *See* 39 U.S.C. 1005(f). The FEHB regulations currently in effect permit health insurance enrollment actions and changes to be made during Open Season periods, which are required to be held annually from mid-November through the mid-December. 5 CFR 890.301(d). Failure to hold a PSHB Open Season period prior to December 31, 2024, when Postal Service employees and Postal Service annuitants lose eligibility for FEHB plan enrollment, may conflict with OPM regulations

In short, given the complexities of establishing this Program, as discussed above, expeditious issuance of these rules is required because otherwise PSHB plans will not be

established by January 2025, potentially resulting in the loss of health insurance coverage for millions of Postal Service employees, Postal Service annuitants, and their family members. An interim final rule is therefore necessary so as to avoid the “possible imminent hazard” that individuals would face from a gap in coverage, *Mack Trucks, Inc.*, 682 F.3d at 93.

For these reasons, OPM finds good cause to issue this interim rule. But, again, this rule is temporary: OPM invites public comments and will promulgate a final rule as soon as practical after receiving and considering them.

Regulatory Impact Analysis

Need for Regulatory Action

This interim final rule implements sections 101 and 102 of the PSRA which direct OPM to establish the PSHB Program for Postal Service employees, annuitants, and their eligible family members. These sections of the PSRA amend chapter 89 of title 5, United States Code, which identifies the individuals who, starting in 2025, will be eligible to enroll in a PSHB plan and may not remain in an FEHB plan under their Postal Service employment or retirement; those who must enroll in Medicare Part B to maintain enrollment in PSHB; the health benefits plans that should be offered to the greatest extent practicable; some plan requirements; the need for automatic enrollment in certain circumstances; contributions by the Postal Service; how reserves for PSHB plans are to be structured; requirements for information sharing; and other requirements necessary for PSHB Program implementation.

The PSHB Program is contained within chapter 89, which governs the FEHB Program generally. The PSRA confirms that PSHB plans are subject to the same provisions as FEHB plans unless they are inconsistent with the statute. OPM is given the discretion to make such determinations.

Section 101 of the PSRA codified at 5 U.S.C. 8903c directs OPM to issue regulations establishing the PSHB Program and is given the discretion to include “any provisions necessary

to implement this section.” Section 8903c(g) addresses the topics for which Congress specifically instructed OPM to promulgate rules, clarifies how existing rules for the FEHB Program will apply to the PSHB Program, as well as new requirements regarding eligibility and enrollment, information sharing with other agencies, PSHB Carrier requirements, and other rules that will govern the PSHB Program. OPM’s interim final rule is necessary to provide transparency into how it is implementing the PSRA, memorialize processes and procedures that will apply, allow carriers to begin preparations to enter the PSHB Program, and give individuals who will be impacted as much information about the PSHB Program as early as possible.

These regulatory provisions implement the statutory requirements, and without these provisions, it will be impossible for OPM to comply with its own obligations under the PSRA, and PSHB Carriers, other agencies, and Postal Service employees and annuitants will be uncertain about how the PSHB Program will operate.

Executive Orders 12866 and 13563

Executive Order 12866 at section 3(f) defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects (annual effect of \$100 million or more), and a “significant” regulatory action is subject to review by the Office of Management and Budget (OMB). OPM anticipates that this

rule is likely to have economic impacts of \$100 million or more in at least 1 year, meeting the definition of a “significant rule” under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributional impacts, and equity). This rule is a significant regulatory action under E.O. 12866. Therefore, OPM has provided an assessment of the potential costs, benefits, and transfers associated with this rule.

Summary of Impacts

Overall, the PSRA and the PSHB Program, through this regulation, will help to promote the financial stability and long-term viability of the Postal Service, which provides a crucial role for society with respect to communication, commerce, and political participation. The Postal Service was established with the intent to benefit the public and provide reliable, affordable nationwide mail, package delivery, and other services. With the Postal Service’s wide reach in providing essential services to nearly everyone in the U.S. in some form, its long-term stability is crucial. The PSRA improves the Postal Service’s financial position, and a financially sustainable Postal Service ensures that the Postal Service can continue to fulfill its universal service mission, and make the investments needed to support service excellence, network efficiency, and introduce enhanced products and services for its customers.

This societal benefit will result primarily from the removal of the prefunding obligation related to future retiree health benefits and the shifting of insurance coverage costs away from the Postal Service to Medicare, and ultimately to taxpayers, who together with beneficiaries, fund Medicare. The Postal Service is required by law to be self-sufficient, and the Postal Service, along with its employees, pay taxes to fund Medicare each year, but many of its employees do not enroll in Medicare after they retire. Therefore, and unlike other employers who offer retiree health benefits and pay Medicare taxes, the Postal Service has not been able to ensure that its

retiree health care program fully utilizes Medicare. Enabling the Postal Service to generally require its Medicare-eligible annuitants to enroll in Medicare when eligible ensures that the Postal Service can utilize Medicare in a similar manner as other employers, which strengthens its financial position and therefore its ability to continue its critical public service mission.

From a societal perspective, the primary costs associated with the implementation of the PSHB Program will be administrative and operational costs necessary to initiate and maintain the program, including development of information technology (IT) systems, education and outreach, and additional administrative staffing for the design, maintenance, and oversight of the increased quantity of health plans. These costs will be largest in the initial start-up phase and will be borne by Federal agencies, as well as carriers offering both FEHB plans and PSHB plans. The PSRA appropriated \$94 million in implementation funding for OPM and other Federal agencies for these administrative and operational costs. Pursuant to section 101(d)(4) of the PSRA, the Postal Service deposited the appropriated funds into the Treasury as a miscellaneous receipt from the Postal Service Fund in fiscal year 2022.

Most of the impact from the PSRA and this regulation will occur via distributional effects. The principal transfer will be the shifting of premium costs from the Postal Service and PSHB members to Medicare as a result of the Medicare Part B enrollment requirements and the integration of Medicare Part D coverage into PSHB plans. This Part D integration could also result in a portion of costs being transferred to the pharmaceutical industry via the statutory manufacturer discounts provided to Part D, in conjunction with discounts negotiated with individual FEHB plans. Further, integrating Part D coverage into PSHB plans may result in a transfer of costs to carriers, particularly those with little Medicare experience, who may need to contract with third-party vendors to assist with integration, increasing administrative costs. The segmentation of the current FEHB risk pool will result in premiums reflective of each separate risk pool's health care utilization and costs, which are estimated to be higher for Postal Service

enrollees compared with non-postal.⁹ This may result in a slight reduction in FEHB premiums following implementation.

Ultimately, the total costs and benefits associated with the PSRA, and this interim final rule are highly uncertain because enrollee and carrier reactions to the effects on Medicare, the FEHB Program, and the new PSHB Program are unknown. In accordance with OMB Circular A-4, the following sections outline the benefits, costs, and transfers associated with section 101 of the PSRA and this regulatory action in more detail. Where specific costs were quantifiable, they are included in Table 1.

Regulatory Baseline

The regulatory baseline for this rule is the FEHB Program as it is currently administered, as the eligible population under both programs will largely remain the same. Postal Service employees, Postal Service annuitants, and their eligible family members are currently eligible for FEHB coverage. In 2021, this population totaled approximately 915,000 enrollees and 1.7 million total covered lives. There are nearly 700,000 Postal Service annuitants, including about 123,000 survivor annuitants. Of the Postal Service annuitants, about 500,000 are currently enrolled in the FEHB Program. A majority of these are Self-Only enrollments while 200,000 are Self Plus One or Self and Family enrollments.

Beginning in the 2025 plan year, the PSHB Program will be the only health benefits program available through the Postal Service to Postal Service employees, Postal Service annuitants, and their eligible family members. Unless they meet a specified exception, as previously outlined, Postal Service Medicare covered annuitants and their Medicare covered members of family will be required to enroll in Part B or will lose their eligibility to continue enrollment in the PSHB Program. Once this eligibility is lost, it cannot be reinstated. As with the

⁹ *H.R. 3076, Postal Service Reform Act of 2021 – Cost Estimate*, Congressional Budget Office (CBO) (2021). <https://www.cbo.gov/system/files/2021-07/hr3076.pdf>.

regulatory baseline, those covered by a PSHB plan will also be responsible for Medicare premiums.

Currently, Postal Service annuitants and their family members that are participating in FEHB are not required to enroll in Medicare Part B, regardless of Medicare status. Based on 2021 data, OPM estimates that 75% of Postal Service annuitants aged 65 and over have enrolled in Medicare Part B. There will be approximately 100,000 Postal Service annuitants and their eligible family members who will be eligible to enroll in Part B during the six-month SEP beginning April 1, 2024.

Prior to the PSRA, the Postal Service paid the Government contribution for all Postal Service employees and annuitants enrolled in FEHB. The Government contribution was paid directly by the Postal Service for employees and from the PSRHBF for annuitants. In addition, the Postal Service was required under the Postal Accountability and Enhancement Act of 2006 to fully prefund retiree health benefits. Section 102 of the PSRA (“The USPS Fairness Act”) amended 5 U.S.C. 8909a to remove this prefunding requirement and replace it with a new calculation for annual payments into the PSRHBF. The law maintains the requirement that the Postal Service continue to pay the Government contribution; directly for employees or through the PSRHBF for annuitants. The Postal Service is also required to pay the Medicare Part B late enrollment penalty for any Medicare covered annuitants and members of family who enroll in Part B during the 2024 SEP. As with the regulatory baseline, there is no Government contribution towards Part B premiums.

Carriers that participate in the PSHB Program will generally be subject to the same minimum requirements for plan design that exist for FEHB plans under the FEHB Program, but PSHB plans will be required to integrate Part D prescription drug benefits for Medicare covered annuitants and Medicare covered members of family. In addition, carriers that are offering both PSHB plans and FEHB plans will need to offer equivalent benefits and cost sharing in the initial year, other than as needed to integrate Part D coverage.

Benefits of Regulatory Action and Implementation

This rule serves to implement the requirements of the PSRA. The regulatory action builds on the statute by offering clarity and efficient implementation. OPM anticipates that the timely promulgation of this rule will allow other Federal agencies, PSHB Carriers, and enrollees to begin necessary education and deliberation.

The Postal Service will benefit from increased financial stability because of the removal of the past-due pre-funding payments and future pre-funding obligations related to the retiree health benefits costs and from having a retiree health benefits program in which more annuitants are enrolled in Medicare. With fewer costs for retiree health benefits, the Postal Service will have more financial stability. Better, more stable Postal Service operations would benefit the country overall. The Postal Service plays a critical role in the nation's communications, commerce, and voting infrastructure. In rural and remote communities especially, many of which lack adequate broadband access and rely heavily on mail service, the Postal Service's universal service mandate ensures crucial access to essentials including medicine and food.¹⁰

Within these communities, the Postal Service is often the only delivery service carrier with a door-to-door network and is heavily relied on by other delivery service carriers to provide "last mile" deliveries. According to the Postal Service Office of Inspector General, the Postal Service provided vital services during the COVID-19 pandemic, including the delivery of critical items such as medications, stimulus payments, election ballots, and record levels of home package deliveries.¹¹ A Government Accountability Office Report found that the Postal Service experienced a 9 percent decline in total mail volume in 2020 when compared to 2019, but

¹⁰ *The USPS and Rural America*, Institute for Policy Studies (2020), <https://inequality.org/wp-content/uploads/2020/04/IPS-policy-brief-USPS-Rural-America2.pdf>.

¹¹ *Audit Report Mail Service During the Early Stages of the COVID-19 Pandemic*, USPS Office of Inspector General (Jan. 2021), <https://www.uspsoig.gov/document/mail-service-during-early-stages-covid-19-pandemic>.

package volume rose by 32 percent over the same period¹². This underscores the importance of a stable Postal Service to the Nation.

With greater financial stability for the Postal Service, current Postal Service employees, Postal Service annuitants, and their family members will also see greater stability in their future health insurance coverage and other benefits.

Medicare covered annuitants may be eligible, depending on whether they meet statutory income and resource thresholds, for the low-income cost-sharing subsidies and premium subsidies that are part of the Medicare part D program, under section 1860D-14 of the Social Security Act.

Costs of Regulatory Action and Implementation

Implementation of the PSRA and this regulatory action necessitates the administration and oversight of new health benefits plans, including substantial member education and outreach efforts, additional interagency coordination and the creation of new IT processes to satisfy new statutory eligibility and enrollment requirements, creating startup and ongoing costs to agencies, enrollees, and carriers. Table 1 depicts an accounting statement summarizing the assessment of the administrative costs associated with this regulatory action. Table 2 depicts the expected allocation of total spending over the course of 10 years, beginning in fiscal year (FY) 2023.

Table 1 – Estimated Administrative and Implementation Costs Associated with Regulatory Action

Agency/ Category	Startup Costs	Ongoing Costs¹
OPM	\$81,680,944	\$49,315,703
Personnel	---	\$24,434,476
IT and IT Contracts	\$68,307,195	\$20,961,759
Non-IT Contracts	\$3,600,000	\$1,735,695
General (Supplies, Equipment, Communications, Training)	\$9,773,749	\$2,183,773
Postal Service	\$11,500,000	\$1,425,000
Implementation costs (updating systems, developing training materials, etc.)	\$11,500,000	---
Personnel (4 Program and 2 IT full-time employees (FTEs))	---	\$925,000

¹² U.S. Postal Service: Volume, Performance, and Financial Changes since the Onset of the COVID-19 Pandemic, Government Accountability Office Publication 21-261 (2021), <https://www.gao.gov/products/gao-21-261>.

Communications	---	\$500,000
Department of Labor	\$72,500	\$2,000
Training and Communication	\$72,500	---
Additional support and communication for separate Open Season	---	\$2,000
Department of Veterans Affairs	\$395,000	---
IT Contracts	\$395,000	---
Social Security Administration	\$7,327,764	\$407,881
Staffing and Overhead	\$5,161,138	\$407,881
System Updates	\$2,166,626	---
Ongoing Data Exchange	---	TBD
Indian Health Service	---	---
Carriers	Unknown	Unknown
Total Administrative Costs	\$100,976,208	\$51,150,584

¹ Recurring costs represented as fully loaded annual costs beginning in FY2025 and remaining consistent through at least FY2032. Given that development and onboarding will occur during run-up period to PSHB implementation, recurring costs will likely cross multiple fiscal periods and gradually ramp up between FY22 and FY25, although all costs are expected to become fully realized beginning in FY25. For details on the expected allocation of total costs by year, see Table 2. All costs are represented based on 2022 dollars and pay scales and are subject to change based on PSHB enrollment and carrier participation following implementation.

Table 2 – Expected Total Administration and Implementation Costs by Year (\$ Millions)

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
Total Costs (All Agencies) ¹	\$66.47	\$75.14	\$52.53	\$51.15	\$51.15	\$51.15	\$51.15	\$51.15	\$51.15	\$51.15

¹ Annual cost projections are in terms of 2022 dollars and payscales and *do not* reflect any discounting, inflation, or other adjustments for Federal payroll increases, staff promotions, etc. This table is intended only to summarize the expected timing of the costs outlined in Table 1 and is not meant to reflect budgetary expectations.

Detailed Startup and Ongoing Cost Related to the PSRA

The following sections contain underlying details for the cost estimates presented in Table 1, including, where appropriate, the assumptions and methodology used by individual agencies in preparing them. For the purposes of this regulatory impact assessment (RIA), *Startup Costs* were defined as upfront, non-recurring costs associated with the PSRA implementation and are represented as aggregate total expenditures for the years leading up to and immediately following the PSHB implementation. *Ongoing Costs* were defined as recurring costs (e.g., salary costs) beginning in the years preceding or immediately following the PSRA implementation and expected to persist through at least FY2032. All ongoing costs are presented as fully loaded, annual totals. These estimates for ongoing costs are preliminary, and funding for ongoing costs would be subject to the annual budget process.

OPM:

Startup Costs:

OPM estimates a total of \$81.6 million in start-up costs for the development and administration of the PSHB Program. This estimate includes \$68.3 million of IT and IT contract costs for system development and updates, including the creation of the centralized enrollment system. The centralized enrollment system will consolidate data from multiple agencies, including USPS, SSA, CMS, IHS, and VA, to create a centralized platform for verifying eligibility and processing enrollments. While a centralized enrollment system was not mandated by the PSRA, it will create efficiencies through the elimination of decentralized duplicative and manual processes and improve interagency communication. It is expected to yield long term cost-savings that will help offset significant upfront costs of development. Additional IT and IT contract costs are anticipated for updating existing systems, including Benefits Plus and the audit resolution tracking system, and developing new resources to improve customer experience, including the creation of an enrollment Decision Support Tool.

The remaining \$13.4 million in estimated startup costs include \$3.6 million for non-IT contractor support throughout implementation and \$9.8 million for additional supplies, equipment, training, and communication related to the PSRA. All costs were estimated based on 2022 dollars and contract rates.

Ongoing Costs:

As this is a new program, additional staffing and resources will be essential to establish and administer the PSHB. OPM estimates a total of \$49.3 million in annual, ongoing costs related to the PSRA. This estimate consists of \$24.4 million in annual salary costs for 153.5 additional full-time employees (FTEs) necessary for contract oversight, program operations, systems maintenance, customer service, policy support, and general support. Additionally, OPM anticipates \$21 million in annual IT and IT contract costs for ongoing system development and maintenance support, and an additional \$1.7 million in annual, non-IT contract costs related to oversight and management of the increased number of health benefits plans within the PSHB and

FEHB populations. Finally, OPM estimates an additional \$2.2 million in annual costs for training, communications and overhead related to the PSHB program and the annual Open Season period.

The above costs are represented as fully loaded annual projections based on 2022 dollars. Salaries and burden were based on 2022 pay tables and Washington, DC metro area locality adjustment, a burden percentage of 34%, and award and transit subsidies. This adjustment factor was used in lieu of a standard wage rate to more accurately reflect the historical trends in benefit costs for OPM employees, based on the anticipated locations and experience-levels of the aforementioned positions. Additionally, the wage rate is meant to capture overhead costs which were already represented in separate categories. All recurring costs are projected to be fully loaded beginning in FY2025 and to persist through at least FY2032. Given that development and onboarding will occur in the run-up to the PSHB implementation, OPM anticipates that annual costs related to the PSRA will increase steadily between FY2022 and FY2024.

Postal Service:

Startup Costs:

The Postal Service estimates \$11.5 million in start-up costs for updating systems, development of training materials, and the development and maintenance of the Health Benefits Education Program. These estimates were calculated based on anticipated system configuration and assumed effort level and are subject to change based on additional requirements that may be required of the Postal Service.

Ongoing Costs:

In preparation for and following implementation of the PSHB, the Postal Service estimates an additional \$1.4 million in annual costs for increased staffing and communication needs. Specifically, the Postal Service estimates \$0.9 million in salary costs for 6 additional FTEs, including 4 Program and 2 IT FTEs, and an additional \$0.5 million towards increased

outreach, education, and communication. Given the general retirement eligibility ages in comparison to the Medicare eligibility age, there will be a 3- to-5-year gap between the time of retirement until Medicare enrollment. It will be critical during the initial implementation of the Program and for the subsequent 5-10 years to send constant communications regarding plan options and healthcare costs, along with information about Medicare Part B eligibility periods and how and when to enroll. Additional resources will also be needed to monitor enrollee compliance for the Medicare Part B enrollment exceptions requirements on an ongoing basis. Although recruitment, onboarding, and development costs will gradually ramp up preceding implementation, the ongoing costs are expected to become fully realized beginning in FY25 and will likely persist for a period of 5-10 years following implementation, at which point the Postal Service will reevaluate resourcing needs. All costs were estimated in terms of 2022 dollars and pay scales.

Department of Labor – Office of Workers’ Compensation Programs (OWCP)

Startup Costs:

OWCP estimates a total of \$72,500 in startup costs related to the PSRA. These include an estimated \$50,000 in staff time for training on the PSRA changes and implementation, and \$22,500 for pre- and post-implementation mailings to approximately 12,500 claimants and beneficiaries regarding changes to health benefit coverage. All costs were estimated based on 2022 dollars and pay scales.

Ongoing Costs:

Beginning in 2025, OWCP estimates an additional \$2,000 of annual, recurring costs for the creation and distribution of mailing announcements and customer service response letters related to the PSHB Open Season.

Department of Veterans Affairs (VA):

Startup Costs:

The VA anticipates startup costs for system updates and development to meet the information sharing requirements outlined in § 890.1612 of the regulation. In total, the VA estimates \$395,000 worth of IT contractor development work will be needed to integrate the existing Veteran Verification process with the centralized Enrollment and Eligibility System. The estimated costs are based on the anticipated number of scrum teams and sprints required to build this functionality and the projected firm-fixed-price contract rates. All costs were estimated in 2022 dollars.

Social Security Administration (SSA):

Startup Costs:

SSA estimates \$7.3 million in startup costs for staffing support and system updates related to the PSHB implementation. These include an estimated \$5.16 million in staffing costs for project management, policy and business process development, and additional technician support for the initial SEP. Additionally, SSA anticipates \$2.17 million in up-front costs for system enhancements that will be necessary to support data exchanges and the initial SEP.

Ongoing Costs:

SSA anticipates approximately 3 FTEs will be needed to support the PSHB following implementation, with estimated salary and overhead costs totaling \$408,000 annually. These costs are based on the anticipated workload for processing annual enrollments and exceptions related to the Medicare coverage requirements for postal annuitants and family members. Additionally, SSA anticipates a small cost for the ongoing data exchange with OPM, although this cost cannot be determined until the data exchange is completed and will ultimately be reimbursed by OPM.

Indian Health Service:

Indian Health Service (IHS) estimates de minimis costs for PSHB implementation. This is based upon the assumption that self-attestation will be utilized for Postal Service annuitants

and family members to provide proof of eligibility for IHS health services for purposes of an exception to the Medicare Part B requirement.

Carriers (Not Quantified):

Carriers will also have startup costs to participate in the PSHB Program, although the magnitude of these costs is unknown and will likely vary by carrier. Based on the 2021 FEHB headcount, OPM estimates that 41 FEHB Carriers provide coverage to Postal Service enrollees and they will therefore be impacted by implementation of the PSHB Program. Although OPM anticipates that not all carriers will elect to participate in the Program, at a minimum, assuming only plans with 1,500 or more Postal Service enrollees choose to participate, 28 carriers would be expected to incur additional costs associated with the creation and administration of separate PSHB plans. These costs will likely be incurred for internal training, updating enrollment processes and information systems, updating financial systems, and development of proposals specific to the PSHB Program. In developing plan options for the PSHB, carriers will not simply be able to duplicate FEHB plan designs as the requirement to integrate Part D coverage is substantively different. While large carriers may be able to leverage existing experience integrating Medicare Part D coverage in their other books of business, the need to apply and submit a different PSHB proposal will be a cost to carriers. PSHB Carriers will continue to incur annual costs to offer plans as there will need to be two sets of proposals, contract negotiations, and enrollment processing for carriers offering both PSHB and FEHB plans. This will likely create additional staffing costs on an ongoing basis.

Postal Service Annuitants (Not Quantified):

Existing and future Postal Service annuitants may incur additional costs in navigating both Medicare and PSHB enrollment decisions, particularly in the initial years following implementation. Prior to the PSHB Program Open Season, a six-month SEP will be offered to provide existing Medicare-eligible Postal Service annuitants and their Medicare-eligible family

members with the opportunity to enroll in Part B. This enrollment window will take place before PSHB benefits and premiums are set, meaning participants will not know the details of the PSHB premiums when making their Medicare election during the SEP. This could create additional burden and confusion for participants and may result in suboptimal enrollment decisions.

As with the training and communications costs for the first year, Postal Service employees may continue to need training as they approach retirement. They may generally experience new costs associated with interacting with a new set of options, especially if they have already planned to take certain actions upon retirement which are now infeasible under the PSRA. Additionally, as is true currently under FEHB, retirement will not be a PSHB qualifying life event. Postal Service annuitants will need to understand how their PSHB plan election will work with the Part B requirement upon retirement or wait for Open Season alignment in both Medicare and the PSHB to make a suitable choice for their health care insurance needs.

Transfers

The main impact of section 101 of the PSRA and these rules will be a transfer of costs from the Postal Service to the Medicare Program, which is funded by taxpayers, including the Postal Service and beneficiaries. Additionally, a portion of these premium costs will likely be transferred to the pharmaceutical manufacturers due to reduced payments received from Medicare Part D enrollees. Table 3 summarizes the projected changes in annual premium expenditures for each of the primary stakeholders. These projections were obtained from separate, independent analyses performed by CMS, the Postal Service, and OPM, which were produced at different points in time and with different underlying methods and assumptions and are therefore intended to summarize the directional transfer of costs among the different stakeholders, not the overall budgetary impacts of the PSRA. Additionally, all estimates were based on FEHB and Medicare coverage as of 2023, and do not incorporate any changes expected

from the Inflation Reduction Act or Carrier Letter 2023-02.¹³ Details on the methods and assumptions utilized by each agency are provided in the Table 3 footnotes.

¹³ FEHB Program Carrier Letter Number 2023-02,
FEHB and Medicare Part D Prescription Drug Coordination (published January 25, 2023).

Table 3 – Net Transfer Effects

PROJECTED CHANGE IN ANNUAL COVERAGE COSTS DUE TO PSRA (\$ Billions)													
Agency/ Outlay	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY23-27	FY23-32
CMS ¹	0.00	0.00	0.00	0.50	0.76	0.92	1.11	1.16	1.35	1.53	1.73	2.18	9.06
Part B, net of premium ^a	0.00	0.00	0.00	0.09	0.18	0.24	0.31	0.39	0.47	0.57	0.68	0.51	2.93
Part D, net of premium and clawback ^b	0.00	0.00	0.00	0.41	0.58	0.68	0.80	0.77	0.88	0.96	1.05	1.67	6.13
USPS ²	0.00	0.00	0.00	-0.30	-0.30	-0.30	-0.30	-0.40	-0.40	-0.40	-0.40	-0.90	-2.80
USPS share of employee premiums	0.00	0.00	0.00	-0.30	-0.30	-0.30	-0.30	-0.40	-0.40	-0.40	-0.40	-0.90	-2.80
PSRHBFB Annuitant Premiums ³	0.00	0.00	0.00	-0.17	-0.23	-0.29	-0.36	-0.45	-0.49	-0.53	-0.58	-0.69	-3.10
PSRHBFB Share of Annuitant Premiums	0.00	0.00	0.00	-0.17	-0.23	-0.29	-0.36	-0.45	-0.49	-0.53	-0.58	-0.69	-3.10
FEHB and Federal Share USPS Premiums ³	0.00	0.00	0.00	-0.09	-0.09	-0.10	-0.10	-0.10	-0.11	-0.11	-0.12	-0.28	-0.83
Payments for NP annuitant premiums	0.00	0.00	0.00	-0.06	-0.07	-0.07	-0.07	-0.08	-0.08	-0.09	-0.09	-0.20	-0.61
Federal Share of USPS Annuitant Premiums	0.00	0.00	0.00	-0.03	-0.03	-0.03	-0.03	-0.03	-0.03	-0.03	-0.03	-0.08	-0.21
Employee and Annuitant Share of Premiums	0.00	0.00	0.00	-0.26	-0.26	-0.25	-0.25	-0.25	-0.25	-0.24	-0.23	-0.76	-1.98
Postal employee share PSHB premiums ²	0.00	0.00	0.00	-0.10	-0.11	-0.12	-0.13	-0.14	-0.15	-0.16	-0.17	-0.34	-1.09
Postal annuitants share PSHB premiums ²	0.00	0.00	0.00	-0.11	-0.12	-0.14	-0.15	-0.16	-0.17	-0.18	-0.19	-0.37	-1.22
Non-Postal employee share FEHB premiums ³	0.00	0.00	0.00	-0.04	-0.04	-0.04	-0.04	-0.05	-0.05	-0.05	-0.05	-0.12	-0.36
Non-Postal annuitant share FEHB premiums ³	0.00	0.00	0.00	-0.03	-0.03	-0.03	-0.03	-0.04	-0.04	-0.04	-0.04	-0.09	-0.28
Postal annuitant premiums for Medicare B ^{1a}	0.00	0.00	0.00	0.03	0.05	0.08	0.11	0.13	0.16	0.19	0.23	0.16	0.98
TOTAL [‡]	0.00	0.00	0.00	-0.32	-0.12	-0.01	0.11	-0.05	0.10	0.24	0.41	-0.45	0.35

[‡]The estimated costs in this table were aggregated from multiple, independent analyses conducted by separate agencies, and are intended only to represent the directional flow of costs between various stakeholders. Due to the differences in assumptions and methodology employed by each agency (as detailed below), the cumulative impacts represented in this table do not directly align with the general expectation, as detailed in the narrative below, that aggregate premium payments will be lower post-PSRA due to the transfer of costs to drug manufacturers via mandatory Part D discounts. All estimates are based on coverage provisions as of 2023 and *do not* reflect expected changes to pharmaceutical coverage from the Inflation Reduction Act or Carrier Letter Number 2023-04, the 2023 FEHB Call Letter.

Sources and methodology:

- Projected Medicare costs for additional Part B and Part D enrollment were provided by CMS
 - Part B projections were based on an assumption that about 7,000 new retirees plus spouses would enroll in Part B in 2025, and growth would be consistent with aged enrollment. Additionally, CMS assumed that roughly 14,000 existing retirees would enroll in 2025, which would degrade over time due to deaths. Expected costs and premiums for additional enrollees were assumed to be consistent with current average Part B beneficiaries.
 - CMS estimated additional Part D costs based on projected annual headcounts of Postal Service annuitants. Annual headcounts were estimated using the 2021 Postal Service annuitant enrollment total (approximately 515,000) and applying an annual growth rate based on the number of new postal retirees in 2021. Growth estimates were trended by the projected annual growth in overall Part A and/or Part B enrollment and were decremented yearly by the annual mortality rates from SSA for ages 70-75. Using this methodology, CMS estimated that approximately 603,000 postal retirees would join Part D in 2025 and that this population would grow to 797,000 by 2032. To project annual Part D spending on Postal retirees, CMS assumed a 90/10 split between PDP-EGWP and MAPD-EGWP, and annual costs consistent with current beneficiaries in each of these enrollment categories.
- Based on estimates provided by USPS actuaries and budget analysts. Projected savings on PSHB premiums are based on the expected reduction in the portion of retirees' medical costs that will be paid by PSHB plans, which is expected to lower overall costs in the combined pool of annuitants and employees and reduce premiums. USPS assumed that 30% of grandfathered annuitants would enroll in Part B during the SEP, resulting in 30,000 new enrollments in 2025. Annual projections for current and annuitant Postal enrollee populations were based on mortality and retirement projections for the postal population, which were developed by OPM.
- Estimates from OPM Office of Administration (OA) Budget Summary as of January 2023. Assumed 30% of grandfathered annuitants and family members would join during SEP and stable population of total annuitants from 2025 – 2032 (annual new retirees + family members ≈ deaths in Postal annuitant population). Differential costs of FEHB and PSHB population was estimated using age distribution in the two populations, which skews slightly higher for Postal, and historical average costs by age band for the joint FEHB population. OA estimates a 5.8% reduction in average PSHB premiums beginning in 2025, which is attributed to the Part B and Part D requirements, and a 0.4% reduction in average FEHB premiums. Annual projections were discounted at a rate of 4% annually and assumed a 4.8% medical inflation rate.

Beginning in 2025, mandatory Medicare Part B enrollment for all future Postal Service Medicare covered annuitants enrolled in PSHB, as well as optional enrollment for all current Medicare-eligible annuitants, will transfer a portion of the costs for these individuals from the Postal Service to Medicare. Additionally, the requirement for all PSHB plans to offer Medicare Part D prescription drug benefits will result in a significant transfer of prescription drug costs for

all current and future Medicare-eligible annuitants and family members from the Postal Service to Medicare, with a portion of these costs transferred to the pharmacy supply chain in the form of reduced payments. This is due to the Medicare Coverage Gap Discount Program at section 1860D-14A of the Social Security Act, which requires manufacturers to provide a substantial discount on brand name drugs dispensed to applicable beneficiaries in the coverage gap. These industry discounts are in addition to the discounts negotiated with individual FEHB plans, resulting in lower per-member payments for the subset of current and future Postal Service annuitants who would have otherwise elected not to enroll in Part D. It is important to note, however, that all estimates related to Part D savings were conducted prior to the enactment of the Inflation Reduction Act (Pub. L. 117-169), which contained significant prescription drug provisions including, for example, a provision that sunsets the Coverage Gap Discount Program at the end of 2024, and establishes a new Manufacturer Discount Program, beginning Jan. 1, 2025, at section 1860D-14C of the Social Security Act.

The increase in Part B and Part D enrollment and the transfer of costs to Medicare will lower the aggregate costs among the PSHB population, as Medicare will cover a larger portion of the costs for Postal Service annuitants and family members that would have previously been covered by the PSHB plan. Given that premiums are based on average per member costs of the combined pool of annuitants and employees, this will likely result in lower premiums for PSHB plans compared with current FEHB premium amounts. While this will reduce costs for the Postal Service and current Postal Service employees, a portion of these costs will likely be transferred to the estimated 25% of current and future Medicare-eligible Postal Service annuitants and Medicare-eligible family members who elect or are required to enroll in Part B and otherwise would not have. These individuals will ultimately be subject to premiums for both Medicare and PSHB plans which, on net, may be higher than the current FEHB premiums. At the same time, being covered by Medicare in conjunction with a PSHB plan may also reduce out-of-pocket expenses (e.g., co-payments and co-insurance) for annuitants than would otherwise have been

incurred. Furthermore, we anticipate that some plans will reimburse all or part of Part B premiums, as is currently the case with some FEHB plans.

It is estimated that the cost of coverage for Postal employees and their eligible family members is slightly higher than for the other Federal employees. The creation of a separate risk pool for Postal Service employees and annuitants will result in premiums that are more reflective of the resulting Postal and non-Postal populations. Removal of these individuals from the FEHB plan population will therefore result in slight reduction in average per member costs which will be directionally reflected in FEHB plan premiums following PSHB implementation. The expected decrease in FEHB plan premiums would be mirrored by a slight increase in PSHB premiums, although this increase would be minimal compared to the expected decrease in premium due to Medicare enrollments, meaning that the likely result will be lower premiums for PSHB plans compared with current FEHB plan premium amounts.

As required in the PSRA, the Postal Service will need to pay to CMS the monthly late enrollment penalties for any Part B enrollments that occurred during the 2024 SEP. These late enrollment penalties are typically assessed to enrollees as a monthly increase in premiums and are intended to transfer a portion of the increased age-related risk that a late enrollee represents, compared with an individual that was enrolled at age 65. We estimate that approximately 100,000 Postal Service annuitant subscribers aged 65+ currently enrolled in the FEHB Program are not enrolled in Medicare Part B and, thus, would be eligible for the SEP. Given that these individuals have previously elected not to enroll in Part B, it is estimated that around 30% of current Postal Service annuitants will choose to enroll during the SEP. For these individuals, the additional late enrollment penalties will be transferred to the Postal Service.

Additional transfers will likely occur among individual carriers and with third party vendors or contractors as part of the PSHB implementation. In particular, the requirements for integration of Part D coverage into PSHB plans will likely benefit larger carriers with more Medicare experience, who will be better positioned to seamlessly adjust plans to incorporate Part

D coverage. Smaller carriers, in particular, are likely to lean on third-party vendors or contractors to assist with the PSHB implementation and/or Part D coverage integration, which will transfer a portion of carrier revenue into these markets.

Uncertainty and Directional Effects Related to Enrollment, Utilization, and Carrier

Participation

All benefits, costs, and transfers summarized above are based on baseline assumptions that plan enrollment, carrier participation, and healthcare utilization will remain consistent following implementation of the PSHB Program. It is likely that implementation of the PSHB Program and the additional Medicare enrollment requirements will impact some or all of these baseline assumptions, which will have downstream effects for cost and utilization within both the PSHB and FEHB populations. The magnitude and directionality of these effects will depend on several factors that are presently uncertain.

Individual carriers will likely weigh the costs and benefits of offering FEHB plans and PSHB plans. Shifting enrollment numbers and additional implementation costs may lead some carriers to scale back or discontinue participation in one or both kinds of plans. This would impact the number of available plan options for both PSHB and FEHB enrollees, as well as the likelihood that they would be able to keep their current plans. However, as noted below, it is likely that the PSRA will increase the total number of plans covering both the Postal Service and greater FEHB population.

Similarly, PSHB enrollees required to enroll in Medicare Part B would be subject to additional premiums, which may impact the likelihood of their enrollment in PSHB plans. It is estimated that around 25% of Postal Service annuitants who are otherwise eligible for Part B are not currently enrolled. It is possible they actively declined Part B coverage because they were satisfied with their existing coverage or felt that the additional Medicare premium costs were too high, although it is also possible that they were not fully aware of the benefits of Medicare

enrollment on their overall health care expenses over the course of their lifetimes. Assuming that a similar percentage of future Postal Service annuitants would have made a similar determination, these individuals will now be required to enroll as a condition of PSHB eligibility. This may result in some Postal Service annuitants dropping PSHB coverage altogether if they determine that PSHB and Part B coverage together is unaffordable or duplicative for their health care circumstances, though this number may be limited since it would require those annuitants to forgo PSHB coverage for the rest of their lifetimes unless individuals opt to participate in a Medicare Advantage plan. This could potentially result in adverse selection within the PSHB plans, referring to the tendency for individuals with higher health risks to disproportionately elect more generous coverage. Ultimately, this would increase the average risk and costs within the PSHB enrolled population, creating upward pressure on premiums. Additionally, some carriers may elect not to offer or discontinue PSHB plans if they anticipate or experience lower than expected enrollment.

The additional Medicare Part B and Part D coverage may also induce a moral hazard effect due to the more robust coverage and lower cost-sharing. Moral hazard refers to the tendency of individuals to increase health care utilization and spending in response to greater coverage or lower out-of-pocket costs. If an individual is required to enroll in Medicare, they may feel more compelled to utilize the benefits, increasing overall health care consumption. This effect has been demonstrated in numerous studies, most notably the RAND and Oregon Health Insurance Experiments, which found that utilization of both necessary and unnecessary health services increased with increased coverage and lower cost sharing.^{14,15} Increased utilization

¹⁴ Brook, Robert H., Emmett B. Keeler, Kathleen N. Lohr, Joseph P. Newhouse, John E. Ware, William H. Rogers, Allyson Ross Davies, Cathy D. Sherbourne, George A. Goldberg, Patricia Camp, Caren Kamberg, Arleen Leibowitz, Joan Keesey, and David Reboussin, *The Health Insurance Experiment: A Classic RAND Study Speaks to the Current Health Care Reform Debate* (2006), https://www.rand.org/pubs/research_briefs/RB9174.html.

¹⁵ See Heidi Allen & Katherine Baicker, *The Effect of Medicaid on Care and Outcomes for Chronic Conditions: Evidence from the Oregon Health Insurance Experiment*, NBER Working Paper No. 29373 (October 2021), <https://www.nber.org/papers/w29373>.

among these individuals would increase the overall per member costs within the PSHB plans which may result in higher premiums and potentially impact health outcomes.

Any increases to premiums as a result of adverse selection or moral hazard would have future implications on PSHB enrollment and plan selection. If premiums increased, a greater percentage of enrollees may shift into alternative plans with less comprehensive benefits such as plans with reduced formularies and narrower provider networks, lower premiums and higher cost-sharing (e.g., standard option as opposed to high option health plans). This could potentially help to counter moral hazard effects and lower costs, although it could intensify adverse selection into the more robust plans, as high-cost individuals would be less likely to change plans.

Despite the assumption that not all carriers will offer both FEHB plans and PSHB plans, it is likely that the PSRA will increase the total number of plans covering both the Postal and greater FEHB population. This will result in smaller risk pools within each plan, which could lead to greater uncertainty with respect to costs. With smaller risk pools, each enrollee's health status has a larger impact on total costs. This can create greater variability in annual premiums. Smaller risk pools increase individual plans' exposure to high-cost outlier events, as there are fewer low or average-cost enrollees to offset these costs. Administrative costs would also be spread across smaller risk pools. To ensure financial solvency in such scenarios, plans may seek to price this additional risk exposure into premiums, resulting in an increase in the aggregate costs for all PSHB plan and FEHB plan enrollees compared to the baseline.

At present, there remains a great deal of uncertainty with respect to the longer-term impacts on plan enrollment, carrier participation, plan design, and plan premiums. It is possible that a number of current FEHB Carriers will elect not to participate in the PSHB Program or to drop their current FEHB plan offerings. Consolidation within the FEHB and PSHB markets would likely benefit larger carriers and may yield some efficiencies through greater economies of scale, although on aggregate, it is expected that PSHB implementation will result in a greater

number of total plans and increased administrative costs and premiums. Fewer options may also simplify plan choice for employees and annuitants, saving time on plan comparisons.

Enrollment in the PSHB Program, particularly among individuals who are required to enroll in Medicare Part B, is also uncertain. For future Postal Service annuitants, the requirement to enroll in Part B after retirement represents an additional cost. This will likely factor into individual retirement planning decisions and could potentially lead to employees remaining in the workforce longer to delay these additional costs. Likewise, lower-risk individuals may determine that their Medicare coverage, including Part B coverage is sufficient for their health care needs and opt out of PSHB enrollment. These aspects could impact PSHB Program risk pools and influence carriers' decisions on whether to continue operating in the PSHB market. Each of these scenarios could trigger potential downstream effects on utilization and premiums and will be important to monitor. OPM invites comment on all topics addressed in this section.

Alternatives

There are no feasible alternatives to this regulation as it implements section 8903c, as added by the PSRA, which establishes the PSHB Program and is mandated by the law. Therefore, OPM does not have the discretion to forego issuing regulations altogether. However, we considered alternatives to certain aspects of this regulation.

Initial Enrollment in the PSHB Program and Medicare Part B

OPM recognizes that, for a small portion of Postal Service annuitants and their family members who take advantage of the Medicare Part B SEP from April 1 to September 30, 2024, there may be confusion about having two consecutive separate health plan enrollment events given that the PSHB Program Open Season for plan year 2025 will occur from November 11 through December 9, 2024. As with current FEHB plans, however, OPM's rate review process for PSHB plans will not be completed until September 2024, which makes simultaneous enrollment in Medicare Part B and PSHB plans extremely problematic. Should OPM open PSHB plan enrollment at the same time as the Medicare SEP, without completing the rate review

process, enrollees would be selecting PSHB plans for which the monthly cost is entirely unknown, leading to more confusion than leaving the Medicare SEP and PSHB Open Enrollment separate.

We explored an opportunity for Postal Service annuitants to “pre-enroll” in PSHB plans prior to OPM completing its PSHB rate review process. Combining the opportunity to pre-enroll in a PSHB plan with the Medicare SEP would allow Postal Service annuitants to complete both actions simultaneously. Alternatively, Postal Service annuitants could be automatically enrolled in a PSHB plan at the same time they enroll in Medicare Part B. Automatic pre-enrollment could relieve these Postal annuitants from making two separate enrollment decisions. However, we found both of these options would be undesirable for enrollees and their family members for several reasons.

Allowing individuals to pre-enroll in PSHB plans during the SEP means they would sign up for a plan without knowing their premium obligation. Similarly, because OPM will not have certified the future PSHB plans by the time the Medicare SEP occurs, there would be no way for an individual to know whether a given carrier will be participating in the PSHB Program for the next plan year, let alone what the final contract would look like. In general, while allowing those annuitants taking advantage of the Medicare SEP to simultaneously pre-enroll in a PSHB plan seems like it could reduce confusion and frustration from having two separate enrollment obligations, the timing of simultaneous PSHB pre-enrollment and the Medicare SEP would mean choosing a PSHB plan with unknown benefits and premiums and likely having to review the selection again during the PSHB Open Season period to ensure that the plan an individual pre-enrolled in actually makes sense for them once plan details are finalized and approved by OPM.

Much of the rationale for considering PSHB plan pre-enrollment can be achieved by providing information about automatic enrollment to Postal Service employees, Postal Service annuitants, and their family members. Postal Service annuitants who wish to keep their plan or take as little action as possible can have their needs met as easily with automatic enrollment after

Open Season ends instead of OPM implementing a new pre-enrollment or automatic pre-enrollment. In addition, under 5 CFR 890.301(f)(2), the OPM Director has the authority to modify the dates for Open Season or hold additional Open Seasons. These authorities and flexibilities exist under current regulations and may be exercised without needing to make any specific provisions under this rulemaking.

Despite these findings, we invite comments on this approach.

Centralized Enrollment

OPM is developing a centralized enrollment system simultaneously with the implementation of the PSHB Program. As explained above, the centralized enrollment system will shift certain responsibilities from the employing office to a new system which will function as an electronic enrollment solution for all PSHB stakeholder groups. With the advancement of technology over time, the existing decentralized processes related to FEHB enrollment may no longer be the most efficient methods for accomplishing enrollment functions. Developing a centralized enrollment system for the PSHB Program allows OPM to take advantage of IT solutions and create a modern enrollment system for Postal Service employees, Postal Service annuitants, and their family members. OPM considered maintaining the existing enrollment processes that apply to enrollment in FEHB plans but ultimately determined that the establishment of the PSHB provided an ideal opportunity to utilize new technologies and centralization processes that will improve the experience of PSHB stakeholders.

Reconsiderations

The standards for requesting reconsideration of an initial decision affecting enrollment in the PSHB Program will be the same as current FEHB standards at 5 CFR 890.104 and 890.308. Individuals will be made aware of their right to an independent review and generally, the time and manner for requesting reconsideration. OPM is considering establishing PSHB-specific processes and will closely track the implementation of the PSHB Program particularly as Postal

Service employees, Postal Service annuitants, family members, PSHB Carriers, employing agencies, and retirement systems become more familiar with the centralized enrollment system.

Effective Date

OPM considered keeping the effective date of coverage for PSHB plans as the first day of the first pay period of the calendar year for Postal Service employees, as is currently done for FEHB plans. Keeping this effective date for PSHB plans that Postal Service employees are familiar with will not result in implementation costs or risk confusing existing enrollees.

However, the benefits of a January 1 effective date outweigh the costs of implementation and educating enrollees, as implementation costs are one-time and after several years there will be little to no ongoing enrollee education needs. Conversely, the benefits of the January 1 date will remain indefinitely. A calendar year start date is easier for enrollees to track and follow and is consistent with the industry standard and many similar programs, including health savings accounts, the Federal Employees Dental and Vision Insurance Program, and the cutoff date for Postal Service Medicare covered annuitants who qualify for an exception to the Medicare enrollment requirement.

Regulatory Flexibility Act

OPM certifies this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or Tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending by State, local, and Tribal governments in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately \$177 million. This interim final rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this is a major rule as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

OPM is investigating whether to create a new information collection or revise an existing information collection for the PSHB Program and seeks public comment on this

question. If an information collection is revised, it will be the SF-2809, *Health Benefits Election Form*, under OMB Control number 3206-0160. Information regarding the collection, including all current supporting materials, can be accessed at

<https://www.reginfo.gov/public/do/PRAMain>. The systems of records notice for this collection is: OPM/Central-23, “FEHB Program Enrollment Records,” available at

<https://www.federalregister.gov/d/2021-01259> (86 FR 6377, January 21, 2021). Regardless of whether a revision to the SF-2809 is pursued or a new collection is proposed, OPM will publish a separate 60-day notice at a later date requesting comments.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Postal Service employees, Reporting and recordkeeping requirements, Retirement.

48 CFR Parts 1602 and 1609

Government employees, Government procurement, Health insurance, Postal Service employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR part 890 and 48 CFR chapter 16 (FEHBAR) as follows:

Title 5—Administrative Personnel

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) of Pub. L. 105–33, 111 Stat. 251; Sec. 890.111 also issued under 36 U.S.C. 5522; Sec. 890.112 also issued under 2 U.S.C. 2051; Sec. 890.113 also issued under section 1110 of Pub. L. 116–92, 133 Stat. 1198 (5 U.S.C. 8702 note); Sec. 890.301 also issued under 26 U.S.C. 9801; Sec. 890.302(b) also issued under 42 U.S.C. 300gg–14; Sec. 890.803 also issued under 50 U.S.C. 3516 (formerly 50 U.S.C. 403p) and 22 U.S.C. 4069c and 4069c–1; subpart L also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064 (5 U.S.C. 5561 note); subpart M also issued under 10 U.S.C. 1108 and 25 U.S.C. 1647b; and subpart P issued under 5 U.S.C. 8903c.

Subpart A—Administration and General Provisions

2. Amend § 890.101 in paragraph (a) by:

a. Revising the introductory text; and

b. Adding the definitions of “Federal Employees Health Benefits (FEHB) Program,” “FEHB plan,” “Medicare covered member of family,” “Postal Service Health Benefits (PSHB) Program,” “Postal Service Medicare covered annuitant,” and “PSHB plan” in alphabetical order.

The revision and additions read as follows:

§ 890.101 Definitions; time computations.

(a) In this part, the terms *annuitant*, *carrier*, *employee*, *employee organization*, *former spouse*, *health benefits plan*, *member of family*, and *service* have the meanings set forth in 5 U.S.C. 8901; the terms *Postal Service*, *Postal Service annuitant*, and *Postal Service employee* have the meanings set forth in 5 U.S.C. 8903c; and these terms supplement the following definitions:

* * * * *

Federal Employees Health Benefits (FEHB) Program means the health insurance program administered by the Office of Personnel Management and established under 5 U.S.C. chapter 89.

FEHB plan means a health benefits plan as defined in 5 U.S.C. 8901(6) and governed by this part, with the exception of a PSHB plan.

* * * * *

Medicare covered member of family means an individual who is both a covered Medicare individual and a member of family of a Postal Service Medicare covered annuitant.

* * * * *

Postal Service Health Benefits (PSHB) Program means the health insurance program established under 5 U.S.C. 8903c within the Federal Employees Health Benefits Program.

Postal Service Medicare covered annuitant means an individual who is both a covered Medicare individual and a Postal Service annuitant.

PSHB plan means a health benefits plan offered under the PSHB Program.

* * * * *

3. Add § 890.115 to read as follows:

§ 890.115 Special provisions for Postal Service employees, Postal Service annuitants, and their eligible family members.

Special provisions for Postal Service employees, Postal Service annuitants, and their eligible family members are set forth at subpart P of this part. Provisions of this part generally apply to Postal Service employees, Postal Service annuitants, and their eligible family members, except for provisions which are inconsistent with provisions of 5 U.S.C. 8903c or subpart P.

Subpart C—Enrollment

4. Amend § 890.301 by adding paragraph (p) to read as follows:

§ 890.301 Opportunities for employees to enroll or change enrollment; effective dates.

* * * * *

(p) *Postal Service employees and Postal Service annuitants eligible to enroll only in PSHB plans.* After December 31, 2024, a Postal Service employee or Postal Service annuitant is not eligible to be enrolled in an FEHB plan but may only enroll in a PSHB plan in accordance with subpart P of this part.

5. Amend § 890.302 by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 890.302 Coverage of family members.

(a)(1) *Enrollment.* An enrollment for self plus one includes the enrollee and one eligible family member. An enrollment for self and family includes all family members who are eligible to be covered by the enrollment except as provided in § 890.308(h). Proof of family member eligibility may be required, and must be provided upon request, to the carrier, the employing office, or OPM. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if they are already covered under another person's self plus one or self and family enrollment.

(2) * * *

(i) *Prohibition on dual enrollment.* A dual enrollment exists when an individual is covered under more than one enrollment under this part. Dual enrollments are prohibited except when an eligible individual would otherwise not have access to coverage and the dual enrollment has been authorized by the employing office.

* * * * *

6. Amend § 890.303 by adding paragraph (j) to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(j) *On transfer to or from Postal Service.* The eligibility of a Postal Service employee to continue enrollment under 5 U.S.C. chapter 89 continues without change when they move from the Postal Service to another employing office, without a break in service of more than 3 days, whether the personnel action is designated as a transfer or not. In such a circumstance they may no longer enroll in a PSHB plan under subpart P of this part, and they may only enroll in an FEHB plan. The eligibility of an employee or annuitant to continue enrollment under 5 U.S.C. chapter 89 continues without change when they move from another employing office to the Postal Service, without a break in service of more than 3 days, whether the personnel action is

designated as a transfer or not; however, they may no longer enroll in an FEHB plan, and they may only enroll in a PSHB plan under subpart P.

7. Amend § 890.308 by adding paragraph (i) read as follows:

§ 890.308 Disenrollment and removal from enrollment.

* * * * *

(i) *Disenrollment and removal from enrollment: Medicare enrollment requirement for certain Postal Service annuitants and family members.* Postal Service Medicare covered annuitants not enrolled in Medicare Part B may be disenrolled, and Medicare covered members of family not enrolled in Medicare Part B may be removed from coverage, pursuant to § 890.1608(b).

Subpart E—Contributions and Withholdings

8. Amend § 890.501 by revising paragraph (b) introductory text to read as follows:

§ 890.501 Government contributions.

* * * * *

(b) In accordance with the provisions of 5 U.S.C. 8906(a) which takes effect with the contract year that begins in January 1999, OPM will determine the amounts representing the weighted average of subscription charges in effect for each contract year, for FEHB plans and for PSHB plans, respectively, for self only, self plus one, and self and family enrollments, as follows:

* * * * *

Subpart O—[Added and Reserved]

9. Add reserved subpart O.

10. Add subpart P, consisting of §§ 890.1601 through 890.1614, to read as follows:

Subpart P—Postal Service Health Benefits Program

Sec.

890.1601 Purpose.

890.1602 Definitions and deemed references.

890.1603 Eligibility for the Postal Service Health Benefits Program.

890.1604 Medicare enrollment requirement for certain Postal Service annuitants and eligible family members.

890.1605 Enrollment in the initial contract year.

890.1606 Opportunities to enroll, change enrollment, or reenroll; effective dates.

890.1608 Disenrollment, removal, termination, cancellation, and suspension.

890.1609 Temporary extension of coverage, conversion, or temporary continuation of coverage.

890.1610 Minimum standards for PSHB Program plans and Carriers.

890.1611 Withdrawal of approval of health benefits plan or carrier.

890.1612 Information sharing.

890.1613 Contributions and withholdings.

890.1614 Other administrative provisions.

§ 890.1601 Purpose.

This subpart sets forth the establishment, administration, and requirements of the Postal Service Health Benefits Program under 5 U.S.C. 8903c, within the FEHB Program under 5 U.S.C. chapter 89. This subpart incorporates provisions of this part to the extent generally applicable and not inconsistent with this subpart.

§ 890.1602 Definitions and deemed references.

(a) In this subpart, the terms set out in § 890.101 apply unless stated otherwise.

(b) In this subpart, the terms *covered Medicare individual*, *initial contract year*, *initial participating carrier*, *Medicare Part A*, *Medicare Part B*, and *Postal Service Medicare covered annuitant* have the meanings set forth in 5 U.S.C. 8903c.

(c) In this subpart –

Cancel means to submit to the employing office an appropriate request electing not to be enrolled in a PSHB plan, by an enrollee who is eligible to continue enrollment, including because the enrollee did not enroll in, or chose to disenroll from, Medicare Part B.

Election not to enroll means to submit an appropriate request electing not to be enrolled in a PSHB plan by an individual who is eligible to enroll, including because the individual chooses not to enroll in Medicare Part B.

Medicare coverage means coverage that meets the requirements of § 890.1604.

(d) In this subpart, wherever reference is made to other subparts of this part –

(1) A reference to employee is deemed a reference to Postal Service employee;

(2) A reference to enrollee is deemed a reference to a Postal Service employee or Postal Service annuitant in whose name the enrollment is carried;

(3) A reference to annuitant, survivor annuitant, or an individual with entitlement to an annuity is deemed a reference to Postal Service annuitant;

(4) A reference to employer, employing agency, employing office, or agency for Postal Service employees is deemed a reference to the Postal Service, for Postal Service annuitants is deemed a reference to the appropriate retirement system or other appropriate entity for compensationers, those enrolled under TCC or Spouse Equity, and annuitants whose annuity is insufficient to withhold the cost of health benefits premiums; and

(5) A reference to carrier is deemed a reference to a PSHB Carrier.

§ 890.1603 Eligibility for the Postal Service Health Benefits Program.

(a) Except as provided by paragraph (b) of this section, the following individuals are eligible to enroll, or to be covered under an enrollment, in a health benefits plan described at 5 U.S.C. 8903c and under this subpart:

(1) Postal Service employee;

(2) Postal Service annuitant; and

(3) Member of family of an individual in paragraph (a)(1) or (2) of this section.

(b) For purposes of this subpart, a Postal Service employee includes a Postal Service employee who receives monthly compensation under 5 U.S.C. chapter 81, subchapter I (“compensation”), who is determined by the Secretary of Labor to be unable to return to duty.

(c) The following individuals may not enroll, or be covered under an enrollment, in this subpart:

(1) Any Postal Service Medicare covered annuitant who is not enrolled in Medicare Part B and is required to be enrolled in Medicare Part B, in accordance with § 890.1604;

(2) Any Medicare covered member of family of a Postal Service Medicare covered annuitant who is not enrolled in Medicare Part B and is required to be enrolled in Medicare Part B, in accordance with § 890.1604; or

(3) Any individual covered by an FEHB plan under this part, except as permitted by § 890.302(a)(2).

(d) Former spouses of Postal Service employees and Postal Service annuitants may establish their eligibility to enroll under subpart H of this part. A former spouse of a Postal Service employee or Postal Service annuitant who is enrolled in an FEHB plan on or before December 31, 2024, may continue enrollment in an FEHB plan and is not required to enroll in a PSHB plan. A former spouse who is eligible under § 890.803(a)(2) because of their enrollment in a PSHB plan is not eligible to enroll or remain enrolled in a PSHB plan; they may enroll in an FEHB plan and, accordingly, the Medicare enrollment requirements in § 890.1604 would not apply.

(e) Survivor annuitants have the same eligibility for reinstatement of enrollment as described in § 890.303(d) for enrollment in a PSHB plan or an FEHB plan as applicable to the service that gives rise to the survivor annuitant status, except that the Medicare enrollment requirements in § 890.1604 would apply to reinstatements of enrollment into a PSHB plan.

(f) Individuals enrolled or covered under the PSHB Program are eligible to elect temporary continuation of coverage as provided under subpart K of this part.

§ 890.1604 Medicare enrollment requirement for certain Postal Service annuitants and eligible family members.

(a) Except as provided by paragraph (c)(1) of this section, a Postal Service Medicare covered annuitant may not enroll or continue enrollment in a health benefits plan under this subpart unless the annuitant is entitled to benefits under Medicare Part A and enrolled in Medicare Part B.

(b) Except as provided by paragraph (c)(2) of this section, where a Postal Service annuitant is a covered Medicare individual and is required to enroll in Medicare Part B in order to be enrolled in a health benefits plan under this subpart, a Medicare covered member of family of the Postal Service annuitant may not enroll in a health benefits plan under this subpart as a member of family of the Postal Service annuitant unless the member of family is enrolled in Medicare Part B.

(c) Pursuant to paragraph (d) of this section, the requirements under paragraphs (a) and (b) of this section, as applicable, shall not apply to the following individuals:

(1) A Postal Service Medicare covered annuitant who—

(i) As of January 1, 2025, is a Postal Service annuitant who is not both entitled to Medicare Part A and enrolled in Medicare Part B;

(ii) As of January 1, 2025, was a Postal Service employee who is at least 64 years of age;

(iii) Resides outside the United States (which includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands), provided that the individual demonstrates such residency to the Postal Service;

(iv) Is enrolled in health care benefits provided by the Department of Veterans Affairs (VA) under 38 U.S.C. chapter 17, subchapter II, including individuals who are not required to enroll in the VA's system of patient enrollment referred to in 38 U.S.C. 1705(a), subject to the documentation requirements in paragraph (d)(2) of this section; or

(v) Is eligible for health services from the Indian Health Service, subject to the documentation requirements in paragraph (d)(3) of this section.

(2) A Medicare covered member of family who—

(i) Is eligible for PSHB coverage based on a Postal Service Medicare covered annuitant who is not required to enroll in Medicare Part B in order to be eligible for coverage under this subpart;

(ii) Resides outside the United States (which includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands), provided that the individual demonstrates such residency to the Postal Service;

(iii) Is enrolled in health care benefits provided by the VA under 38 U.S.C. chapter 17, subchapter II, including individuals who are not required to enroll in the VA's system of patient enrollment referred to in 38 U.S.C. 1705(a) to receive VA hospital care and medical services, subject to the documentation requirements in paragraph (d)(2) of this section; or

(iv) Is eligible for health services from the Indian Health Service subject to the documentation requirements in paragraph (d)(3) of this section.

(d) To qualify for an exception under paragraph (c) of this section, a Postal Service Medicare covered annuitant or a Medicare covered member of family must meet one of the following documentation requirements:

(1) Demonstrating qualification to the Postal Service for the exceptions at paragraphs (c)(1)(iii) and (c)(2)(ii) of this section;

(2) Documentation from the Department of Veterans Affairs in a form, manner, and frequency as prescribed by OPM demonstrating the individual meets an exception identified in paragraphs (c)(1)(iv) and (c)(2)(iii) of this section; or

(3) Documentation from the Indian Health Service (IHS) in a form, manner, and frequency as prescribed by OPM in consultation with IHS demonstrating the individual meets an exception identified in paragraphs (c)(1)(v) and (c)(2)(iv) of this section.

(e) A Postal Service Medicare covered annuitant or a Medicare covered member of family may notify the Postal Service, in writing, if they choose not to enroll in or to disenroll from Medicare Part B as described in §890.1608(e). This will have the effect of a termination of coverage, pursuant to § 890.1608(b).

(f) The process for disenrollment or removal from PSHB enrollment for non-enrollment in Medicare Part B is described in § 890.1608(b).

§ 890.1605 Enrollment in the initial contract year.

(a) *Definitions.* In this section—

Current enrollment type means the type of coverage (self only, self plus one, or self and family) of the FEHB plan in which the individual is enrolled during the contract year immediately preceding the initial contract year;

Current option with respect to an individual, means the option under a FEHB plan in which the individual is enrolled during the contract year immediately preceding the initial contract year; and

Current plan means, with respect to an individual, the FEHB plan in which the individual is enrolled during the contract year immediately preceding the initial contract year.

(b) *Transitional Open Season.* (1) During the Open Season that immediately precedes the initial contract year (i.e., the transitional Open Season), a Postal Service employee or Postal Service annuitant—

(i) May elect to enroll or elect not to enroll in a PSHB plan; and

(ii) Will not be enrolled or continue enrollment in an FEHB plan under this part as a Postal Service employee or a Postal Service annuitant.

(2) A Postal Service employee or Postal Service annuitant who is eligible to enroll in a PSHB plan and is enrolled in an FEHB plan but who does not make an election during the transitional Open Season either to enroll in a PSHB plan or not to enroll in a PSHB plan will be automatically enrolled in a PSHB plan pursuant to paragraph (c) of this section.

(3) During the transitional Open Season, a Postal Service employee in a nonpay status, such as leave without pay, except for the case of a 365-day period of nonpay status as set forth at § 890.303(e), may enroll in a PSHB plan or may be automatically enrolled in a PSHB plan pursuant to paragraph (b)(2) of this section.

(c) *Automatic enrollment.* Each Postal Service employee or Postal Service annuitant who is enrolled in a current plan and does not enroll or make an election not to enroll, for the initial contract year, will be automatically enrolled in a PSHB plan by OPM as follows:

(1) In a PSHB plan by the carrier of the individual's current plan if the carrier offers only one plan under this subpart.

(2) If the carrier of the individual's current plan offers more than one health benefits plan or option under this subpart, in the plan and option offered by that carrier that provides coverage with equivalent benefits and cost sharing to the individual's current plan and option, as determined by OPM.

(3) If there is no such plan as identified by OPM in paragraph (c)(1) or (2) of this section, in the lowest-cost nationwide plan option offered under this subpart that is not a high deductible health plan and does not charge an association or membership fee as determined by OPM.

(4) All enrollments under paragraph (c)(1) of this section will be in the same enrollment type as the current enrollment type.

(d) *Automatic enrollment – effect on family members.* A Postal Service employee or Postal Service annuitant automatically enrolled under paragraph (c) of this section will be enrolled in the same enrollment type they were enrolled in immediately preceding the initial

contract year. The enrollee's family member(s), if eligible, will be covered under the same enrollment type they were covered under immediately preceding the initial contract year.

(1) A self plus one enrollment will cover the same eligible family member as in the current plan. Automatic enrollment does not verify eligibility of family members. The enrollee must make an affirmative enrollment change to remove an ineligible family member and may replace them with an eligible family member or change the enrollment to a self only or to a self and family enrollment type. Failure to affirmatively change an automatic enrollment to remove an ineligible family member from a self plus one enrollment will result in coverage only for the enrollee but premium withholding for a self plus one enrollment.

(2) A self and family enrollment will include all eligible members of family. Automatic enrollment does not verify identity of eligible family members. The enrollee must affirmatively notify the PSHB Carrier, employing office, or OPM of any changes to members of family.

(e) *Belated enrollment and enrollment changes.* Belated enrollments and enrollment changes will be permitted as follows:

(1) In general, belated enrollments or belated enrollment changes are permitted in accordance with § 890.301(c) for Postal Service employees and § 890.306(c) for Postal Service annuitants.

(2) Any individuals who should have been automatically enrolled pursuant to this section but were not, are deemed to have met the requirement to show that they were unable to enroll for cause beyond their control.

(3) OPM may, in its discretion, deem other individuals or groups of individuals to have met the requirement to show that they were unable to enroll for cause beyond their control.

(4) Unless required to be a prospective change by governing premium conversion under part 892 of this chapter, a belated Open Season enrollment or enrollment change, coverage, and premium obligation take effect on January 1 of the contract year.

§ 890.1606 Opportunities to enroll, change enrollment, or reenroll; effective dates.

(a) Except as otherwise provided in this subpart, a Postal Service employee may enroll or change enrollment, as provided by § 890.301, in a PSHB plan and may not enroll in a FEHB plan as a Postal Service employee.

(b) Except as otherwise provided in this subpart, a Postal Service annuitant may change enrollment or reenroll as provided by § 890.306, in a PSHB plan and may not enroll or reenroll in a FEHB plan as a Postal Service annuitant.

(c) Except as otherwise provided in this subpart, reinstatement of enrollment in accordance with § 890.305 is permitted in a PSHB plan.

(d) Except as otherwise provided in this subpart, initial decisions and reconsiderations on enrollment and eligibility under this subpart will be made pursuant to § 890.104.

(e) Under this subpart, an enrollment, change of enrollment, or reenrollment made during Open Season takes effect on the January 1 of the next year.

(f) Under this subpart, OPM will effectuate the following health benefits actions: to enroll or change enrollment; to elect not to enroll; and to reenroll. The employing office makes determinations of eligibility under 5 U.S.C. chapter 89, pursuant to application of 39 U.S.C. 1005.

§ 890.1608 Disenrollment, removal, termination, cancellation, and suspension.

(a) *Enrollment in FEHB plan terminates prior to the initial PSHB contract year.* For individuals who are eligible to enroll under this subpart pursuant to § 890.1603(a), enrollment in an FEHB plan and coverage of the enrollee and covered family members under that FEHB plan will terminate at the end of the contract year preceding the initial contract year. Coverage under a FEHB plan will remain available for an eligible family member who is or becomes covered as a member of family of a FEHB plan enrollee who is not eligible for a PSHB plan pursuant to § 890.1603(a)(1) or (2). Individuals whose coverage is terminated under this paragraph (a) are not eligible for temporary continuation of coverage under subpart K of this part pursuant to § 890.1103(b).

(b) Disenrollment and removal from enrollment: Postal Service Medicare covered annuitants and Medicare covered members of family not enrolled in Medicare Part B. (1) Unless the individual qualifies for an exception under § 890.1604(c), a Postal Service Medicare covered annuitant may be disenrolled and a Medicare covered member of family may be removed from PSHB coverage if not enrolled in Medicare Part B either:

(i) By the end of their Medicare initial enrollment period or applicable Medicare special enrollment period; or,

(ii) Any time after January 1, 2025, that the PSHB Carrier, the Postal Service, or OPM determines that the individual was required to be enrolled but has not enrolled in Medicare Part B.

(2) A Postal Service Medicare covered annuitant will not be disenrolled and a Medicare covered member of family will not be removed from PSHB coverage in a case where that individual was not informed of their obligation to enroll in Medicare Part B, or it would be against equity and good conscience to remove the individual. In such a case, that individual will be permitted to stay enrolled in or covered by PSHB if they enroll in Medicare during their next enrollment opportunity, such as the next Medicare general enrollment period.

(3) A Postal Service Medicare covered annuitant will not be disenrolled and a Medicare covered member of family will not be removed from PSHB coverage due to not being enrolled in Medicare Part B if such individual qualifies for one of the exceptions in § 890.1604(c).

(4) A Postal Service Medicare covered annuitant may not be disenrolled if they have suspended PSHB enrollment while enrolled in a Medicare-sponsored plan under section 1833, 1876, or 1851 of the Social Security Act as described in § 890.304(d)(2).

(5) Disenrollment of a Postal Service Medicare covered annuitant from a PSHB plan under this section shall be considered a termination with entitlement of the enrollee and PSHB covered family members to a 31-day temporary extension of coverage and the right of conversion under § 890.401.

(c) *Ineligibility under this subpart.* The PSHB Carrier, Postal Service, other applicable employing offices, or OPM, as appropriate, may take action to disenroll ineligible individuals from enrollment or remove covered members of family from an enrollment pursuant to § 890.308.

(d) *Removal due to fraud or misrepresentation.* Pursuant to § 890.308(e)(3) and (f)(3), fraud or intentional misrepresentation of the fact of non-enrollment in, or disenrollment from, Medicare Part B may be grounds for retroactive disenrollment and removal to the date of loss of eligibility.

(e) *Cancellation of PSHB in writing to the Postal Service due to lack of Medicare coverage.* As required by 5 U.S.C. 8903c(g)(3)(D), the Postal Service Medicare covered annuitant or a Medicare covered member of family may cancel coverage under this subpart in writing to the Postal Service because the individuals choose not to enroll in or to disenroll from Medicare Part B. In such a case, PSHB enrollment or coverage under this subpart will be cancelled as described in paragraphs (e)(1) through (4) of this section.

(1) The cancellation of a Postal Service Medicare covered annuitant's PSHB plan enrollment—

(i) Is effective as of the last day of the last pay period in which the Postal Service Medicare covered annuitant was enrolled in Medicare Part B, or the last day of the last pay period before the individual became a Postal Service Medicare covered annuitant; and

(ii) Cancels the PSHB plan coverage of any family members covered under a self plus one or self and family enrollment, subject to applicable provisions at § 890.1609.

(2) The cancellation of a Medicare covered member of family's PSHB plan coverage is effective the last day in which the Medicare covered family member was enrolled in Medicare Part B, or the last day before the individual became eligible for Medicare but did not enroll.

(3) When writing to notify the Postal Service that a Medicare covered member of family will not enroll in or will disenroll from Medicare Part B, the Postal Service Medicare covered annuitant may elect to decrease their PSHB plan enrollment type as described in § 890.306(e).

(4) Cancellation of PSHB enrollment or coverage under this paragraph (e) shall be treated as a termination and an enrollee or covered family member whose enrollment or coverage is canceled is entitled to a 31-day temporary extension of coverage and right of conversion in accordance with § 890.401.

(f) *Temporary extension of coverage and conversion.* A Postal Service employee, Postal Service annuitant, or their covered family member whose enrollment or coverage is terminated other than by cancellation of the enrollment or discontinuance of the plan, in whole or part, is entitled to a 31-day temporary extension of coverage and right of conversion in accordance with § 890.401.

§ 890.1609 Temporary extension of coverage, conversion, or temporary continuation of coverage.

(a) A 31-day temporary extension of coverage and right of conversion under subpart D of this part is available from the health benefits plan under 5 U.S.C. chapter 89 in which the enrollee or covered family member was most recently enrolled or covered.

(b) If an individual was enrolled in or covered by a PSHB plan until becoming eligible for temporary continuation of coverage under subpart K of this part, the individual may elect coverage under subpart K by a PSHB plan offered under this subpart.

§ 890.1610 Minimum standards for PSHB Program plans and Carriers.

(a) *Minimum standards for PSHB plans.* To qualify for approval by OPM, a health benefits plan under this subpart shall—

(1) Meet the minimum standards for health benefits plans at § 890.201, unless otherwise stated in this subpart;

(2) Provide prescription drug benefits pursuant to 5 U.S.C. 8903c(h)(2);

(3) Provide equivalent benefits and cost-sharing in the initial contract year to the carrier's FEHB plan, as applicable, pursuant to section 8903(c)(2);

(4) Maintain separate reserves, including contingency reserves, with respect to enrollees in each PSHB plan as directed by OPM; and

(5) Begin coverage on January 1 of each year.

(b) *Minimum standards for PSHB Carriers.* The minimum standards for health benefits carriers under this subpart shall be those contained in 48 CFR 1609.70.

(c) *Approval of plans with 1,500 or more Postal enrollees.* To the greatest extent practicable, in the initial contract year, OPM shall approve a health benefits plan offered by a carrier under this subpart that has equivalent benefits and cost-sharing to the FEHB plan offered by that carrier in which the total enrollment of Postal Service employees and Postal Service annuitants was 1,500 or more in the 2023 contract year. OPM may exempt a comprehensive medical plan, as described in 5 U.S.C 8903(4), from the requirement in this paragraph (c).

(d) *Withdrawal of plan approval.* Failure on the part of the PSHB Carrier's plan to meet the standards in this section is cause for OPM's withdrawal of approval of the plan in accordance with § 890.1611.

§ 890.1611 Withdrawal of approval of health benefits plan or carrier.

(a) OPM may withdraw approval of a health benefits plan or carrier under this subpart and may give notice of non-renewal of a contract pursuant to § 890.204 if the standards in § 890.1610 and 48 CFR 1609.70 are not met.

(b) Contracts to offer health benefits plans in the PSHB Program pursuant to 5 U.S.C 8903(c)(1)(A) are subject to nonrenewal in accordance with § 890.205.

§ 890.1612 Information sharing.

(a) OPM shall establish periodic agreements with the Social Security Administration regarding Postal Service annuitants and their eligible family members for purposes of:

(1) Determining whether Postal Service Medicare covered annuitants and Medicare covered members of family of those annuitants satisfy the Medicare enrollment requirements at § 890.1604; and

(2) Determining which Postal Service annuitants and family members of such annuitants may be eligible to enroll in Medicare Part B under section 1837(o) of the Social Security Act.

(b) OPM shall identify Postal Service annuitants and their eligible family members who may be covered Medicare individuals from OPM's stored enrollment data. OPM will provide identifying information about these annuitants and their eligible family members to the Social Security Administration via secure data transfer for the purposes as outlined in the periodic agreements.

(c) OPM shall establish periodic agreements with the Department of Health and Human Services, the United States Postal Service, the Department of Veterans Affairs, and other Federal agencies as needed to share data and information as is necessary to carry out 5 U.S.C. 8903c and this subpart.

(d) These agreements shall specify, at a minimum, the purpose and legal authorities that govern the elements of information or data to be shared, the process that will be used for sharing the information or data, the frequency of sharing the information and data, and the permitted uses and redisclosure of the information and data.

(e) The agreements established under paragraph (c) of this section shall, to the greatest extent practicable, ensure that data is shared for the following purposes:

(1) To determine which Postal Service employees or Postal Service annuitants may be eligible to enroll in a PSHB plan; and which family members may be covered;

(2) To determine which Postal Service Medicare covered annuitants and their Medicare covered members of family may be subject to the enrollment requirements described in § 890.1604; and

(3) To create a system for data sharing as needed for carrying out 5 U.S.C. 8903c and this subpart.

§ 890.1613 Contributions and withholdings.

(a) *In general.* The calculations for contributions and withholdings for coverage under this subpart will be made in the same manner as 5 U.S.C. 8906 and subpart E of this part.

(b) *Postal Service contribution.* The Government contribution with respect to the Postal Service for health benefits plans under this subpart shall be determined annually in accordance with § 890.501 commencing 2024 using the weighted average of rates offered by PSHB plans for the following year with respect to self only, self plus one, and self and family enrollments. For the initial contract year, the weighted average applicable for determining the Government contribution by the Postal Service will be determined using the calculation at 5 U.S.C. 8903c(i), except that OPM will use available data with respect to Postal Service enrollment for 2024, taking into account 2023 data.

(c) *Medicare late enrollment penalty.* Upon request by the Postal Service, and only until the Postal Service Retiree Health Benefits Fund is depleted, OPM will pay out of the Fund any late enrollment penalties required under section 1839(e)(1) of the Social Security Act for individuals who enrolled during the special enrollment period established under section 1837(o) of the Social Security Act (42 U.S.C. 1395p).

(d) *Calculations for the Postal Service Retiree Health Benefits Fund.* As directed by 5 U.S.C. 8909a OPM shall make annual computations with respect to the cost of claims attributable to Postal Service annuitants and their covered family members, and the United States Postal Service shall pay into the Fund annually according to those computations.

(e) *Clarification of statutory terms.* OPM has determined that “future net claims costs” in the calculation in 5 U.S.C. 8909a(e)(1) is equivalent to “estimated net claims costs” as defined in 5 U.S.C. 8909a(g).

§ 890.1614 Other administrative provisions.

(a) *Correction of errors.* Correction of errors under this subpart may be made according to § 890.103, except that retroactive corrections to an enrollment under this subpart may not apply retroactively beyond the initial contract year. OPM retains authority to order correction of errors under this subpart.

(b) *Carrier entitlement to pursue subrogation and reimbursement recoveries.* Carrier entitlement to pursue subrogation and reimbursement recoveries must follow the requirements of § 890.106.

(c) *Enrollment reconciliation.* (1) OPM and each PSHB Carrier must, at OPM's direction and in the manner requested by OPM, reconcile PSHB plan enrollment records, including with a list of the Postal Service Medicare covered annuitants and their Medicare covered members of family that satisfy the Medicare enrollment requirements at § 890.1604.

(2) Any Postal Service Medicare covered annuitant or a Medicare covered member of family of such annuitant that is found to be enrolled or covered under a PSHB plan without satisfying the Medicare enrollment requirements at § 890.1604 shall be disenrolled or removed pursuant to § 890.1608.

(d) *Information about PSHB Program enrollment requirements.* OPM shall provide timely information about PSHB Program enrollment requirements to the United States Postal Service to disseminate to Postal Service employees, Postal Service annuitants, and their eligible family members. Any requests for more information should be directed, in writing, to the United States Postal Service.

(e) *All other provisions.* Other requirements of this part not referenced within this subpart shall be interpreted to apply to the PSHB Program consistent with definitions and deemed references, unless it conflicts with this subpart, as determined by the Director.

(f) *Conflicts.* In the event of a conflict between a provision of this subpart and a provision in this part, as determined by the Director, this subpart will supersede.

Chapter 16—Office of Personnel Management Federal Employees Health Benefits

Acquisition Regulation

PART 1602—DEFINITIONS OF WORDS AND TERMS

11. The authority citation for part 1602 is revised to read as follows:

Authority: 5 U.S.C. 8903c and 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

12. Add sections 1602.170-17 through 1602.170-22 to read as follows:

Sec.

* * * * *

1602.170-17 Postal Service.

1602.170-18 Postal Service annuitant.

1602.170-19 Postal Service employee.

1602.170-20 PSHB Carrier.

1602.170-21 PSHB plan.

1602.170-22 PSHB Program.

* * * * *

1602.170-17 Postal Service.

Postal Service means the United States Postal Service.

1602.170-18 Postal Service annuitant.

Postal Service annuitant has the meaning set forth in 5 U.S.C. 8903c(a)(8).

1602.170-19 Postal Service employee.

Postal Service employee has the meaning set forth in 5 U.S.C. 8903c(a)(9).

1602.170-20 PSHB Carrier.

PSHB Carrier means a carrier that enters into a contract with OPM under 5 U.S.C. 8902 to offer a health benefits plan in the PSHB Program.

1602.170-21 PSHB plan.

PSHB plan means a health benefits plan offered under the PSHB Program.

1602.170-22 PSHB Program.

Postal Service Health Benefits (PSHB) Program means the Program established under 5 U.S.C. 8903c within the Federal Employees Health Benefits Program.

PART 1609 – CONTRACTOR QUALIFICATIONS

13. The authority citation for part 1609 is revised to read as follows:

Authority: 5 U.S.C. 8903c and 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

14. Add section 1609.7002 to read as follows:

1609.7002 Minimum standards for Postal Service Health Benefits Carriers.

(a) The carrier of a PSHB plan shall meet the minimum standards as described in 1609.7001.

(b) To the greatest extent practicable, an FEHB Carrier (defined in 1602.170-1) that offers an FEHB plan (defined in 1602.170-9) in which the total enrollment includes 1,500 or more Postal Service employees or Postal Service annuitants in the contract year beginning January 2023 must offer a PSHB plan in the initial contract year. OPM may exempt a comprehensive medical plan, as described in 5 U.S.C. 8903(4), from the requirement in this paragraph (b).